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INTERNATIONAL REVIEW

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I. INTERNATIONAL CIVIL AVIATION ORGANIZATION

SUMMARY OF THE WORK OF THE LEGAL COMMITTEE DURING ITS THIRTEENTH SESSION

I. MEETINGS

1. The Thirteenth Session of the Legal Committee was inaugurated at the Headquarters of ICAO, Montreal, on 6 September 1960, with Mr. C. Gómez Jara (Spain), Chairman of the Legal Committee, in the Chair. Mr. R. M. Macdonnell, Secretary General of ICAO, welcomed the Committee on behalf of the Organization. The Chairman thanked the Secretary General for his welcome.

2. The Committee held twenty-six meetings between 6 and 23 September 1960.

II. OFFICERS

3. Pursuant to Rule 6 of the Rules of Procedure, the Committee elected, at its first meeting, the following officers:

Mr. K. Sidenbladh (Sweden), Chairman
Mr. C. Berezowski (Polish People's Republic), Vice-Chairman
Mr. J. B. Diaz (Philippines), Vice-Chairman

III. REPRESENTATION OF STATES AND INTERNATIONAL ORGANIZATIONS

4. Representatives of twenty-seven Contracting States and Observers of one non-contracting State and three international organizations attended one or more meetings of the Committee during the session.

IV. HIRE, CHARTER AND INTERCHANGE OF AIRCRAFT—CONSIDERATION OF THE TOKYO DRAFT CONVENTION AS REVISED AT PARIS

5. The first main item on the agenda of the Committee was consideration of the Tokyo draft Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier as revised by a Subcommittee meeting held in Paris in March 1960 in pursuance of Resolution A12-22 of the Assembly. In Resolution A12-22, the Assembly (June-July 1959) requested that the Subcommittee on the Hire, Charter and Interchange of Aircraft be reconstituted "for the limited purpose of considering the comments received from the States and international organizations with particular attention to Article V of the draft convention, and making recommendations and suggestions concerning those comments." The reconstituted Subcommittee met in Paris in March 1960 and prepared a draft convention and a report thereon. These, as well as comments and proposals received in the matter from States and international organizations were carefully considered by the Committee which, by the end of the session, prepared a draft convention entitled Draft Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier. The draft convention, which is appended to the Committee's report on the subject (Annex "A" hereto) is considered by the Committee as ready for presentation to the States as a final draft. Therefore the draft and the report thereon are transmitted to the Council for taking action in accordance with the Assembly Resolution (A7-6) on the Procedure for Approval of Draft Conventions on International Air Law.

6. During the consideration of the above-mentioned draft convention, the Committee appointed a Drafting Committee composed of:

Mr. L. Outers (Belgium)
Mr. J. P. Houle (Canada)
Mr. M. R. Acosta Bonilla (Honduras)[1]
Mr. A. Kotaite (Lebanon)
Mr. H. Drion (Netherlands)
Mr. C. Gómez Jara (Spain)
Mr. A. W. G. Kean (United Kingdom)[2]
Mr. J. H. Wanner (United States of America)

which, under the chairmanship of Mr. Drion, prepared a draft text pursuant to decisions taken by the Committee.[3]

V. AERIAL COLLISIONS

7. The second main item on the agenda of the Committee was consideration of a draft convention on aerial collisions the latest draft of which had been prepared by a Subcommittee meeting in Paris in March-April 1960. It was not possible, within the time available at this session, for the Committee to consider more than some selected problems related to this subject. The Committee, after taking decisions on those problems, decided that the subject should be further studied, having regard to those decisions, by a subcommittee which it decided to establish for the purpose. The Committee's report on its study of this subject appears in Annex "C" hereto.

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[1] Mr. D. H. Montes (Honduras) replaced Mr. Acosta Bonilla for a number of meetings.

[2] Mr. P. L. Bushe-Fox (United Kingdom) was present at meetings with Mr. Kean, and also replaced Mr. Kean for a number of meetings.

[3] Mr. K. Sidenbladh (Sweden), Chairman of the Legal Committee, and Mr. C. Berezowski (Polish People's Republic), Vice-Chairman of the Legal Committee, and Mr. G. Rinck (Germany), Chairman of the Paris Subcommittee, also assisted at the meetings.

VI. Amendments to the Rules of Procedure

8. The Committee appointed a Working Group on the Rules of Procedure composed of:

Mr. A. Garnault (France)
Mr. S. Cacopardo (Italy)
Mr. E. M. Loaeza (Mexico)
Mr. W. Guldimann (Switzerland)
Mr. R. O. Wilberforce (United Kingdom)

to examine proposals made by the Italian, Swiss and United Kingdom Delegations for amendments to the Rules of Procedure of the Committee. The Working Group prepared a draft amendment which is set out in Annex "C" hereto and which was adopted by the Committee.

8.1 The Swiss Representative on the Legal Committee, Dr. W. Guldimann, presented a proposal on the procedure to be followed in the preparation of draft conventions. The proposal is to be considered at the next session of the Committee.

VII. Carriage of Nuclear Material by Air

9. During its session, the Committee heard an oral interim report from Mr. A. W. G. Kean (United Kingdom), Rapporteur on the subject of the carriage of nuclear material by air. The Rapporteur informed the Committee of the development of conventions on the liability for nuclear incidents prepared by the OEEC and IAEA respectively. It was agreed that the Rapporteur would prepare a written analysis of certain features of the OEEC Convention signed in Paris in July 1960, such analysis to be circulated to Members of the Committee. The Committee desired to record its view that ICAO had a special interest in any such aspects of conventions on liability for nuclear incidents prepared by various international organizations as might have a bearing on international air transport, and requested that the liaison of ICAO with such organizations be firmly established.

VIII. Review of General Program of Work

10. The Committee, having completed its work on the item "Hire, Charter and Interchange of Aircraft," deleted it from Part A (Subjects of current work) of its work program. It added to Part A the item "Liability of air traffic control agencies."[4] On considering Part B (Non-current subjects), the Committee deleted the item "Global limitation of liability of the operator." The Committee then decided to recommend to the Council that the work program be as follows:

Part A (Subjects of current work)

(a) aerial collisions;
(b) the legal status of the aircraft (subject to consideration by the Committee of the comments of States and international organizations);
(c) carriage of nuclear material by air;
(d) legal status of the aircraft commander;
(e) liability of air traffic control agencies.

(*Note:* Items (c), (d) and (e) are not necessarily ranked in order of priority.)

Part B (Subjects on which no work should be undertaken or directed by Legal Committee unless and until a report has been submitted to

[4] For reasons see Annex "B," paragraph 3.

the Council by the Secretary General or by the Chairman of the Legal Committee indicating the need for such work and Council has approved, or unless the Assembly or Council otherwise directs that active work should be undertaken)

(a) study of a system of guarantees for the payment of compensation in pursuance of the Warsaw Convention;

(b) study with a view to unifying the rules relating to procedure in cases arising under conventions on air law and of the rules of procedure applicable to the execution of judgments;

(c) research in regard to measures for promoting the uniform interpretation of international private air law conventions, and research in regard to measures to be taken in order to ensure (i) the international authority of judgments by competent tribunals on conventions in force on air matters and (ii) the distribution and allocation of awards in pursuance of such conventions;

(d) consideration of problems concerning assistance on sea and land and remuneration therefor;

(e) problems of nationality and registration of aircraft operated by international agencies.

11. The Chairman of the Committee was authorized to appoint a rapporteur or rapporteurs for subjects (a) and (b) under Part B and also to replace the Rapporteur on subject (c) under Part B.

IX. Report of the Secretary

12. The Committee noted the report of the Secretary.

X. Date, Place and Provisional Agenda of the Next Session of the Committee

13. The Committee was of the opinion that its Fourteenth Session should be convened on or about 1 September 1961. However, if a diplomatic conference were to be held at that time, the Fourteenth Session of the Legal Committee should, in its opinion, be held on or about 1 September 1962. Considering that the decision to convene a diplomatic conference rests with the Council, the date of the next session remains uncertain at this stage. Therefore, and in view of decisions taken by it with regard to the provisional agenda of the next session, the Committee decided that the provisional agenda of the next session shall, subject to approval by the Council, include the following subjects:

Aerial Collisions

The Legal Status of the Aircraft (subject to consideration by the Committee of the comments of States and international organizations).

Amendments to the Rules of Procedure of the Committee

Review of the general program of work of the Committee

XI. Tribute to Deceased Members

14. The Committee observed a brief silence as a tribute to the memory of three Representatives, Mr. C. Ganns (Brazil), Mr. P. Vallindas (Greece) and Mr. P. Langmead (IUAI), who had made valuable contributions to the work of the Committee at past sessions and who had passed away since the Committee met at Munich last year.

ANNEX "A"
REPORT ON THE DRAFT CONVENTION

(See paragraph 5 of the Summary of the Work of the Legal Committee during its Thirteenth Session)

INTRODUCTION

1. The subject of hire, charter and interchange of aircraft has been under study in ICAO since 1955 having been considered at various times by a Rapporteur, a Subcommittee and the Legal Committee. During the course of these studies it became apparent that it would be desirable, in order to facilitate the chartering and hiring of aircraft, to find solutions for certain legal problems arising in relation to such transactions. Thus, with reference to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929), certain legal problems would arise when an aircraft or any part of the capacity of an aircraft is chartered or hired with crew as well as when, under other arrangements between carriers, air carriage is performed by a person other than the person who made the "Warsaw" agreement of carriage with the passenger or consignor. No significant problems arise with respect to the Chicago Convention or the Rome Convention of 1952.[5]

2. With a view to solving the above-mentioned problems under the Warsaw Convention, the Legal Committee at its Eleventh Session (Tokyo, September 1957) drew up a draft convention and subsequently the Council circulated the draft to States and interested international organizations for their comments on it. In Resolution A12-22, the Assembly (June-July 1959) requested that the Subcommittee on the Hire, Charter and Interchange of Aircraft be reconstituted "for the limited purpose of considering the comments received from the States and international organizations with particular attention to Article V of the draft convention, and making recommendations and suggestions concerning those comments." Accordingly, the reconstituted Subcommittee met in Paris in March 1960 and prepared a draft convention and report thereon. These revised draft and report were considered by the Legal Committee during its Thirteenth Session at Montreal in September 1960.

MAIN PROBLEMS CONSIDERED BY THE COMMITTEE IN RELATION TO THE DRAFT CONVENTION

3. The Committee considered the case where a person has made with a passenger or consignor an agreement of carriage which is governed by the Warsaw Convention but another person actually performs the whole or part of that carriage. For examples of such cases see paragraph 5 below. In a case of this kind there is a difference of legal opinion on the question whether in those provisions of the Warsaw Convention which refer to "the carrier," the person who has entered into the agreement as aforesaid or the person actually performing the carriage is meant. The Committee considered that the passenger or consignor should not be left in such an uncertain position and that it should be ensured that his rights under his Warsaw Agreement should be preserved and enforceable against both the contracting carrier and the actual carrier. Accordingly, the Committee drew up the draft convention set forth in the Appendix hereto as a proposed solution to the problems which it had before it. The draft takes into account—as required by Assembly Resolution A12-22—the comments received from States and international organizations in relation to the Tokyo draft. In the

[5] See Secretariat Commentary referred to in paragraph 10 below.

opinion of the Committee, the text is ready for presentation to the States as a final draft.

4. In the succeeding paragraphs will be found a summary of the scope and purposes and the principles of the draft convention.

SCOPE AND PURPOSES OF THE DRAFT CONVENTION PREPARED AT MONTREAL

5. The draft convention is intended, as to its scope, to apply only to those cases where a party called the "contracting carrier" has made an agreement with the passenger or consignor, or with a person acting on behalf of the passenger or consignor, for international carriage by air within the meaning of the Warsaw Convention of 1929 or that Convention as amended by The Hague Protocol of 1955, but the carriage is actually performed in whole or in part by another person called the "actual carrier." Examples of such cases are:

—charter of an aircraft with crew or interchange of an aircraft with crew;

—where the passenger has made an agreement for carriage with one airline, but that airline has in fact arranged for that passenger to be actually carried by another airline; and

—air freight forwarding operations: An air freight forwarder is a person who does not engage in air transportation but accepts cargo for carriage by air and re-consigns it to an air carrier for transportation. *Vis-à-vis* the consignor he is a carrier, but *vis-à-vis* the actual carrier he himself is a consignor of the same cargo.

6. It should be noted that the draft convention is not intended to apply to the following cases:

(a) where the agreement for international carriage by air made by the passenger (or consignor) with a carrier is *replaced* by a new agreement made between the passenger (or consignor) and another person who actually performs the carriage; in such a case there is clearly a *novation;*

(b) where the actual carrier is a "successive carrier" within the meaning of Article 30 of the Warsaw Convention.

7. The purpose of the draft convention is to lay down rules governing the rights and obligations of the actual carrier in relation to the passengers, consignors and consignees, leaving the legal position of the actual carrier in relation to the contracting carrier unaffected by the draft convention.

PRINCIPLES OF THE DRAFT CONVENTION

8. The principles underlying the draft convention are:

(a) If *the actual carrier* performs the whole or any part of carriage which according to the agreement of the contracting carrier with the passenger or consignor is Warsaw carriage, then he, as well as the contracting carrier, *shall be governed by the regime of the Warsaw Convention* in respect of carriage which the actual carrier performs; this is so even if the carriage performed by the actual carrier would not otherwise be governed by the Warsaw Convention, e.g., if it is domestic carriage.

(b) The Committee gave careful consideration to the question whether there should not be an exception to the above-mentioned principle in the case of cargo which is re-consigned by the contracting carrier, for example, in the case where an air freight forwarder has received cargo from a consignor and in turn has re-consigned it for transportation by the actual carrier. A proposal considered by the Committee in this connection was that

in such a case the rights and obligations of the actual carrier should be determined by the regime governing the agreement of carriage which the actual carrier may have made with the contracting carrier, e.g., the air freight forwarder, unless the contracting carrier informs the actual carrier that the carriage of all or part of such cargo is subject to the Warsaw Convention. An argument in support of the proposal was that the actual carrier would have no knowledge that the agreement for carriage between the consignor and the contracting carrier was one governed by the Warsaw Convention. As to this, the opinion was expressed that it should be possible to ensure, by appropriate national legislations, that in such cases the contracting carrier would be obliged to notify the actual carrier that the cargo concerned, whether or not included in a consolidated shipment, might be subject to rules of international carriage. The argument was also made that the original consignor should not be subjected to a regime governing a contract, namely that made between the two carriers, to which he was not a party and that his rights under the regime of the Warsaw Convention should continue to apply irrespective of whether the contracting carrier himself actually carried the cargo or made arrangements for the cargo to be actually carried by some other person. The Committee's decision was that the principle mentioned at (a) above should apply not only to the carriage of passengers but also to the carriage of all cargo.

(c) Under the regime established by the draft convention, the acts and omissions of the actual carrier and those of his servants and agents acting within the scope of their employment are, in relation to the carriage performed by the actual carrier, deemed to be also those of the contracting carrier and *vice versa*. However, the actual carrier will not be subject to unlimited liability due to an act or omission of the contracting carrier; nor will the actual carrier, without his consent, be affected by any special agreement, waiver of rights or declaration made by or to the contracting carrier which results in the actual carrier being subject to obligations or liabilities to which he would not otherwise have been subject.

(d) *A complaint to be made* or *orders to be given* to the carrier under the Warsaw Convention shall have the same effect whether addressed to the contracting carrier or to the actual carrier. However, orders referred to in Article 12 of the Warsaw Convention must be addressed to the contracting carrier.

(e) *Servants or agents* of the contracting carrier as well as those of the actual carrier are given, in relation to the carriage performed by the actual carrier and if they acted within the scope of their employment, the right to invoke the limits of liability applicable in accordance with the draft convention to the carrier whose servants or agents they are.

(f) The amount of compensation which a claimant may recover, whether by suing either one or both of the carriers, or their servants or agents acting within the scope of their employment, is not to exceed the limit applicable in accordance with the draft convention. But none of these persons shall be liable for a sum in excess of the limit applicable to him.

(g) In respect of the carriage performed by the actual carrier, the plaintiff has the option of bringing *an action for damages* against the contracting carrier or against the actual carrier or against both together. A crrier against whom an action is brought has a right to have the other carrier made a party to the proceedings.

(h) A claimant may bring an action in the *jurisdictions* referred to in Article 28 of the Warsaw Convention against either the contracting carrier or the actual carrier or both of them. He may, however, sue the actual carrier before a court where that carrier is ordinarily resident or has his principal place of business and, in such case, he may also sue the contracting carrier in that court.

(i) The principles of Articles 23 (as amended by The Hague Protocol) and 32 of the Warsaw Convention concerning the *nullity of certain provisions and clauses* have been incorporated in the Montreal draft. In dealing with the question of nullity, the Montreal draft specifies that nothing in the article dealing with that subject shall affect the rights and obligations of the contracting carrier and the actual carrier *inter se*.

TITLE

9. The Committee considered that the provisions of the draft should constitute a separate convention rather than a protocol to the Warsaw Convention or an agreement supplemental thereto. The title reflects the main purpose of the draft, namely, to unify certain rules relating to international carriage by air performed by a person other than the contracting carrier.

SECRETARIAT COMMENTARY

10. The Committee was unable, in the time available during the Thirteenth Session, to prepare a detailed commentary on the draft convention. Accordingly, it has authorized the Secretariat to prepare such a commentary which, after approval by the Chairman of the Committee, will be submitted to the Council. The Committee recommends that, if the Council decides to circulate the draft convention to States and international organizations, the Secretariat commentary should also be circulated.

APPENDIX

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

ARTICLE I

In this Convention:

(a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;

(b) "contracting carrier" means the party by or on behalf of whom an agreement for carriage governed by the Warsaw Convention has been made with a passenger or consignor, or with a person acting on behalf of the passenger or consignor;

(c) "actual carrier" means a person, other than the contracting carrier, who performs the whole of the carriage contemplated in paragraph (b), or performs part of such carriage but is not, with respect to such part, a successive carrier within the meaning of Article 30 of the Warsaw Convention.

ARTICLE II

If an actual carrier performs the whole or any part of carriage which, according to the agreement referred to in Article I, paragraph (b), is governed by the Warsaw Convention, both he and the contracting carrier shall be subject to the rules of the Warsaw Convention in respect of the carriage

which the actual carrier performs, except as otherwise provided in this Convention.

ARTICLE III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment, shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment, shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to unlimited liability. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or waives rights established under that Convention shall not affect the actual carrier unless agreed to by him.

ARTICLE IV

Any complaint to be made, or order to be given, to the carrier, under the Warsaw Convention, shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall be addressed to the contracting carrier.

ARTICLE V

In relation to the carriage performed by the actual carrier, the servants and agents of the contracting carrier as well as those of the actual carrier shall, if they acted within the scope of their employment, be entitled to invoke the limits of liability which are applicable under this Convention to the carrier whose servants or agents they are.

ARTICLE VI

The aggregate of the amounts recoverable from the contracting carrier and the actual carrier and their servants and agents acting within the scope of their employment shall not exceed the highest amount which may be awarded against either the contracting carrier or the actual carrier under this Convention, provided that none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

ARTICLE VII

In respect of the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against the contracting carrier or against the actual carrier or against both together. If the action is brought against only one of those carriers, that carrier shall have the right to have the other made a party to the proceedings.

ARTICLE VIII

1. An action for damages under this Convention against the actual carrier may be brought, at the option of the plaintiff, only before a court in which an action may be brought against the contracting carrier in accordance with Article 28 of the Warsaw Convention, or before a court having jurisdiction where the actual carrier is ordinarily resident or has his principal place of business.

2. When, in accordance with the preceding paragraph, a court is seized of an action against the actual carrier in respect of the carriage performed by him, an action in respect of that carriage may also be brought before the same court against the contracting carrier.

ARTICLE IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

4. Nothing in this Article shall affect the rights and obligations of the two carriers between themselves.

ANNEX "B"

REPORT ON AERIAL COLLISIONS

I. INTRODUCTION

1. A draft Convention on Aerial Collisions was drawn up by the Legal Committee during its Tenth Session (Montreal, September 1954). Consequent upon a request of the Legal Commission of the ICAO Assembly (June-July 1959), this draft was revised by a Subcommittee on Aerial Collisions which met in Paris in March-April 1960. The revised draft was before the Committee during its Thirteenth Session.

II. DISCUSSION OF THE SUBJECT OF AERIAL COLLISIONS BY THE LEGAL COMMITTEE DURING ITS THIRTEENTH SESSION

Method of Discussing the Subject

2. The Committee was able to devote only four-and-a-half meetings to consideration of the subject of aerial collisions. Therefore the Committee confined its discussions to the following four topics: (1) the liability of air traffic control agencies; (2) direct actions in cases of surface damage resulting from an aerial collision; (3) the basis of liability in direct actions by the occupants of one aircraft against the operator of the other aircraft involved in a collision; (4) the limitation of liability.

Liability of Air Traffic Control Agencies

3. Arguments put before the Committee in favor of regulating this question now in relation to the convention on aerial collisions were based on the increasing role of air traffic control agencies. In this regard, mention was made of the number of aircraft now in service, the high speed of aircraft of present and projected types, the height at which aircraft were flying at

present and the international aspect of air traffic control agencies whereby an agency located in a particular country controlled aircraft flying outside that country.

3.1 On the other hand, it was submitted that the liability of air traffic control agencies was a question which did not arise merely in relation to aerial collisions. Moreover, since many air traffic control agencies were operated in the exercise of a governmental function, the related liability questions might not be suitable for regulation by an international convention.

3.2 The Committee finally decided that the convention an aerial collisions should not include provisions regulating the liability of air traffic control agencies. As it was understood that this decision would not preclude the Committee from engaging in a general study of the question, the Committee decided to include it in Part A (Subjects for current study) of its general work program without, however, giving the question any priority.

Direct Actions in Cases of Surface Damage Resulting from an Aerial Collision

4. In considering the question of direct actions in cases of surface damage resulting from an aerial collision, the Committee noted a view to the effect that the lack of extensive acceptance of the Rome Convention disturbed an original concept according to which a global limitation of the liabilities of operators of aircraft could be more or less ensured by means of the so-called "Trilogy" (Warsaw Convention, Rome Convention and an aerial collisions convention). According to this view, the question of the utility or adequacy of having a convention on aerial collisions should be re-examined.

4.1 On the other hand, it was pointed out that, in countries where the Rome Convention is not in force, national laws applied to cases of surface damage resulting from an aerial collision; and so the lack of extensive acceptance of the Rome Convention did not preclude consideration of the merits of proposals contained in the Paris Draft or others which might be advanced to regulate questions of liability in cases of aerial collisions.

4.2 The Committee agreed that, under the circumstances, the draft convention should not contain provisions for direct actions being brought in respect of damage on the surface. In this regard, it noted that the non-acceptance of the Rome Convention had hindered work on the draft convention on aerial collisions and welcomed the initiative which it had been informed the Council would shortly be taking in relation to Assembly Resolution A12-23 (Participation of States in International Conventions on Private Air Law).

Basis of Liability

5. The Committee considered the basis of liability of the operator of one of the aircraft involved in an aerial collision in respect of damage caused to passengers or goods on board another aircraft involved in the collision.

5.1 Doubt was expressed as to the justification of the rule contained in the Paris Draft whereby a claimant must prove fault on the part of the defendant-operator and at the same time be subject to a limitation of the compensation recoverable. In this regard, it was pointed out that, in the air law conventions which limited the defendant's liability, namely, the Warsaw Convention, including the amendments to it adopted at The Hague in 1955, and the Rome Convention, the plaintiff had a *quid pro quo* in that the defendant was subjected to an onerous regime in having to prove that he was not at fault or in being liable absolutely. For these reasons, the Committee adopted, as a basis for a draft convention, a proposal according to which the principle of liability would be—

(i) in respect of passengers and goods on the other aircraft: the Warsaw system that liability attaches upon proof that the damage occurred, but the operator may exonerate himself by proving that he took all necessary steps to avoid the damage;

(ii) in respect of other damage: a system whereby the operator will be liable if the claimant establishes that the operator was at fault.

Limitation of Liability—General

6. In view of the limited time available, the Committee was able to discuss only two aspects of the question of the limitation of liability, namely, whether or not there should be an overall limitation of liability of operators in the case of an aerial collision, and the matter of the limitation of liability of an operator in respect of passengers and property carried on the other aircraft involved in the collision.

Limitation of Liability—Overall Limitation

7. In favor of the inclusion of an overall limitation, it was argued that if it were fixed at a fairly high level, operators would have a better estimate as to the amount for which they should take out insurance, and further that if, within the overall limitation, there were no limits as to individual claims, there would be greater flexibility in regard to settlement of the latter. On the other hand, according to one view it would not be possible to have an overall limitation since, now that it had been decided that the convention should include no provisions in respect of direct actions in cases of surface damage, there would be no limit as to the amount recoverable in a recourse action where payment had to be made for such damage. A further argument against the inclusion of an overall limitation in the proposed convention was that there were no good reasons for rejecting the Air Transport Committee recommendation against the inclusion of such a limitation in the draft prepared at Montreal in 1954. Accordingly, the Committee decided that the proposed convention should not provide for an overall limitation.

Limitation of Liability—Limit With Respect to Passengers and Property on the Other Aircraft

8. Here the basic question was whether there should be a limit at all. It was submitted that the answer to that question would depend greatly on whether or not it was felt that the international air transport industry had attained such a state of economic strength as no longer to require protection in the form of limitation of liability of operators.

8.1 An argument against having a limitation of liability was that it would be unfair to adopt a system that would require the claimant to prove fault on the part of the operator and, at the same time, prevent the former from obtaining compensation beyond a certain limit. However, it was noted that the Air Transport Committee, on being faced with that system in the Montreal Draft of 1954 and the same objection, had nevertheless recommended the inclusion of limits in that draft.

8.2 According to one view, there could be anomaly resulting from a limitation of liability as illustrated by the following example: A claimant associated with one aircraft might, in a case where both the operator of the other aircraft and the air traffic control agency were at fault, find his action against the other operator subject to a limit, whilst the same claimant, in respect of the same damage, would be able to recover, if an action were available under national law against the air traffic control agencies, an amount without any limit.

8.3 In favor of the inclusion of a limitation of liability in the convention, it was argued that, as a consequence of the adoption of a new basis of

liability (see paragraph 5.1 above) in regard to claims in respect of passengers and property carried on one aircraft against the operator of the other aircraft, the claimant would have the benefit of a certain advantage in such cases since he would not have the burden of proving fault.

8.4 As to the amount of the limits, one inequality pointed out to the Committee was that, under circumstances where the passenger was deemed to have recognized, if not to have undertaken, the risk of air travel, he could recover against one of the operators involved in a collision, namely, his own carrier, compensation only within the Warsaw/Hague limits, but could, by merely choosing as defendant the other of those operators, evade the above-mentioned limitation and recover higher compensation as specified by the Air Transport Committee, e.g., up to double the Warsaw/Hague limits. On the other hand, it was stated that in a Warsaw carriage there was a specific circumstance, namely, a contract, while as between the other operator and the injured claimant belonging to the first aircraft there was no promise under any such contract in regard to limitation of liability. In the latter case the action would be essentially one in tort. Accordingly, it would not be anomalous that, in an action based on tort, the amount recoverable might be higher than the Warsaw/Hague limits.

8.5 It was also pointed out to the Committee that Article IV, paragraph 2, of the Paris Draft could give rise to an injustice. Thus an innocent second operator might have to pay out to the claimant associated with the first aircraft double the Warsaw/Hague limits, while the second operator could not, in a recourse action against the first operator who was actually at fault, recover more than the Warsaw/Hague limits.

8.6 The Committee decided to accept the Hague limits in respect of passengers and consignors as a basis for the preparation of a draft convention, on the assumption that there would be no cumulation of amounts recoverable.

III. Future Study of the Subject

9. The Committee decided to request the Subcommittee on Aerial Collisions to continue its work, with certain changes in membership, and to prepare a draft convention for submission to the Fourteenth Session of the Committee taking into account discussions which had taken place, and decisions reached, during the Thirteenth Session. The Committee also decided that the subject of aerial collisions would, subject to approval by the Council, be placed first in order of priority on the active part of its work program and also as the first item on the provisional agenda of the Fourteenth Session.

ANNEX "C"

AMENDMENT TO THE RULES OF PROCEDURE OF THE LEGAL COMMITTEE

Rule 28A

Texts by Subcommittees

Where a text for a draft convention has been prepared by a subcommittee and presented to the Committee, then, unless the Committee shall in any case by a two-thirds majority otherwise decide:

(a) the text so prepared shall be taken as the basis of discussion;

(b) any proposals in relation to the text so prepared shall be submitted in the form of amendments to the text.

STANDARD CLAUSES FOR BILATERAL AGREEMENTS DEALING WITH COMMERCIAL RIGHTS OF SCHEDULED AIR SERVICES (ECAC)

The European Civil Aviation Conference developed Standard Clauses for Bilateral Agreements Dealing with Commercial Rights of Scheduled Air Services and requested the Council of ICAO to examine them to see if they could be of value in a similar way to other Contracting States of ICAO.

In August, 1960, the ICAO Secretary General advised Member States and international organizations that the 12th Session of the Assembly adopted the following resolution:

> That the Council should continue the comparative and analytical study of the provisions of bilateral agreements and the study of the standard provisions approach to multilateral agreements taking into account the standard administrative and technical clauses adopted by the Third Session of ECAC (ECAC Recommendation 38/1959).

The study of the provisions of bilateral agreements has been on ICAO's work program since its inception: first, as part of the attempt to develop a multilateral agreement on commercial rights, and in recent years as part of the study of multilateralism in general, and of the possible standardization of the provisions of bilateral agreements in particular. It was thought that this effort might lead towards some form of partial multilateral solution of which the standardization of the administrative and technical clauses for bilateral or multilateral use was one possibility.

The ICAO Secretariat examined and analyzed the provisions of bilateral agreements along the lines indicated, having regard especially to the requirements of the European region as indicated by ECAC. It was from this work that the European Civil Aviation Conference finally developed in 1959 the standard set of administrative and technical clauses referred to by the Assembly in the resolution quoted above. The Conference recommended that ECAC member States, when preparing bilateral agreements with other members of ECAC after 1 May 1959, should adopt these standard clauses and, further, that the ICAO Council be invited to examine these clauses to see if they could be of value in a similar way to other contracting states of ICAO.

The Air Transport Committee of ICAO considered the method of giving effect to the Resolution, with particular reference to the possibility of developing standard administrative and technical provisions for use by ICAO member States. It agreed, as a first step, to secure the comments of States on the set of standard clauses adopted by ECAC. The Secretariat made a preliminary study, with a view to providing government with some useful material concerning the adaptability and suitability of these clauses for adoption by ICAO States, as follows:

SECRETARIAT NOTES ON STANDARD CLAUSES FOR BILATERAL AGREEMENTS DEVELOPED BY ECAC AT ITS THIRD SESSION (MARCH 1959)

GENERAL NOTE:

There exist, on the whole, a large measure of similarity in the administrative and technical clauses of the bilateral agreements concluded between ICAO member States. To a greater or lesser degree, these clauses are patterned on the provisions contained in the draft "Form of Standard Agreement for Provisional Air Routes" recommended (Recommendation No. VIII) in the Final Act of the Conference on International Civil Aviation (Chicago, 1944). In terms of precise wording and content, however, agreements of ECAC member States are, as a group, generally more uniform than agreements between other States. In some cases, variations as well as differences in the provisions of agreements between ICAO States are such

as would make it senseless to compare them with the corresponding ECAC clauses. For the purpose of this study, therefore, the Secretariat has directed its attention to the main body of agreements showing large areas of similarity in their administrative and technical clauses.

With respect to several provisions that are found in virtually all the bilateral agreements between ICAO States (notably those relating to applicability of air regulations; entry and clearance regulations with respect to passengers, crew and cargo; prevention of discriminatory practices and guarantee of equality of treatment with respect to airport and facility charges; mutual recognition of certificates and licenses; registration of agreement) ECAC considered their contents to be adequately covered by the relevant provisions of the Chicago Convention (Articles 11, 13, 15, 32, 33 and 83). These provisions therefore did not appear in the ECAC standard clauses.

The Conference also agreed, *inter alia,* that parties to an agreement should ensure that their airlines would give advance information of any change in timetables, services, or types of aircraft used. But it felt that it was not necessary to incorporate a provision to this effect in bilateral agreements, since the information would always be provided in practice for operational reasons (see Doc. 7977, ECAC/3-1, para 65 (d), p. 36).

ARTICLE 1

> Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement, for the purpose of establishing scheduled international air services on the routes specified [in an Annex hereto or in exchanges of notes]. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. . . .

NOTE: With minor variations, the wording of the first part of this article as a whole is essentially the same as the phraseology used in a majority of bilateral agreements between ICAO States. One difference is the fact that rights are generally granted not in the agreement itself, but in an annex. With the possible exception of this difference, it would appear that ICAO member States in general will have little difficulty in adopting the text of the standard clause.

ARTICLE 1 (continued)

> . . . The airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:
>
> (a) to fly without landing across the territory of the other Contracting Party;
>
> (b) to make stops in the said territory for non-traffic purposes.
>
> (c) [Here insert a description of the traffic rights granted in the partic-
> (d) ular bilateral agreements.]
> (etc.)

NOTE: Even where this is granted in the agreement itself, and not in an annex, the right to fly over territory and to make stops for technical purposes is seldom spelled out in precisely the same way as the provision appearing above. (There are notable exceptions: *e.g.,* Article 5 of the Agreement between Japan and Sweden is framed in exactly the same manner as the ECAC standard clauses.) Some States might in fact regard these clauses dealing with the granting of rights as being not of an administrative or technical nature.

ARTICLE 2

> 1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorizations.

3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention on International Civil Aviation (Chicago, 1944).

NOTE: There are various differences in wording between the above clauses and the corresponding articles of a majority of bilateral agreements between ICAO States, concerning the conditions imposed on the exercise of the rights granted. However, these differences do not appear sufficiently important to make the standard clauses unacceptable to non-ECAC States.

ARTICLE 2 (continued)

4. Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 1, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

NOTE: There was considerable discussion at the 3rd Session of ECAC of the provision relating to substantial ownership and effective control of an airline. This provision has formed part of bilateral agreements, but some States require "majority" ownership rather than "substantial" ownership to be vested in the State concerned or in its nationals, and this view was reflected in the Conference. It was decided, however, that it would not be desirable to change what had become a standard provision for the majority of ICAO States and that the words "substantial ownership," although admittedly vague, were sufficiently clear when associated with the words "effective control" (see Doc. 7977, ECAC/3-1, para. 65 (a), pp. 35-36). In Article 2, paragraph 4, therefore, the phrase "substantial ownership and effective control" is retained.

From the standpoint of drafting, the above provision represents a departure from most bilateral agreements wherein a single article deals with the right of a contracting party "to withhold" or "to revoke" an operating authorization in case it is not satisfied that substantial ownership and effective control of an airline designated by the other contracting party are vested in that party or in its nationals. Paragraph 4 of Article 2 is concerned with the right to refuse to grant an operating authorization, while the right to revoke an operating authorization already granted is dealt with in Article 3, paragraph 1 (a) (see below). Both clauses provide, in addition, for the right of a contracting party to impose special conditions on an airline if deemed necessary.

ARTICLE 2 (continued)

5. When an airline has been so designated and authorized, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of the present Agreement is in force in respect of that service.

NOTE: This clause imposes an additional condition on the exercise of the rights granted by a reference to meeting the requirements of the article of the agreement relating to tariffs, according to which tariffs must be approved before the inauguration of agreed services. The provision might not prove acceptable to a number of ICAO States, particularly those whose bilateral agreements do not contain any article relating to tariffs.

ARTICLE 3

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 1 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

(a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party, or

(b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or

(c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

NOTE: In paragraph 1 of Article 3, as in paragraph 4 of Article 2, it is provided that each contracting party "shall have the right" to revoke an operating authorization, etc. This differs from the wording "reserves the right" to revoke, etc., appearing in most of the bilateral agreements between ICAO States. Although the ECAC phraseology is found only in a limited number of bilateral agreements, it is possible that States in general would accept it as being a more positive description of the right in question. Paragraph 1 of Article 3 refers, in addition, to the right of a contracting party to suspend the rights granted to an airline in certain cases. This again is a provision found in a minority of agreements. It seems reasonable to assume, however, that since the revocation of an operating authorization is the final sanction, States would generally recognize the usefulness of adopting certain less drastic measures, such as temporary suspension of the rights granted.

ARTICLE 3 (continued)

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

NOTE: While a majority of bilateral agreements do not contain a provision of this kind, the obvious advantage of prior consultation in dealing with matters such as the revocation or suspension of operating authorization should certainly be taken into account by ICAO States when considering the desirability of adopting a provision along the lines of the ECAC standard clause.

ARTICLE 4

1. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. There shall also be exempt[6] from the same duties and taxes, with the exception of charges corresponding to the service performed:

(a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board aircraft engaged in an international service of the other Contracting Party;

(b) spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party;

(c) fuel and lubricants destined to supply aircraft operated on interna-

[6] The means of giving effect to exemption may vary from country to country; for example taxes may have to be paid to be refunded afterwards.

tional services by the designated airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under Customs supervision or control.

NOTE: The contents of Article 4 above differ from and are, in some respects, of a lower standard that (a) Article 24 of the Convention, (b) "Resolution on taxation of fuel, lubricants and other consumable technical supplies" adopted by Council in 1951 (Doc. 7145, C/824), and (c) provisions of Annex 9. Some points of difference are described below:

(i) Article 4, paragraph 1 of the standard clauses is generally comparable with Article 24 (a) of the Convention but does not include spare parts on an arriving aircraft;

(ii) Article 4, paragraph 1 of the standard clauses states that both the aircraft and the regular equipment, supplies of fuel and lubricants, and aircraft stores should be exempt from all customs duties, inspection fees and other duties or taxes, whereas Article 24 (a) of the Convention distinguishes between the aircraft and other material as regards freedom from duty (*i.e.*, Article 24 (a) states that the aircraft shall be "free of duty" and the other material shall be exempt from "customs duty, inspection fees or similar national or local duties and charges");

(iii) Article 4, paragraph 2 (b) of the standard clauses refers to spare parts only, whereas Article 24 (b) of the Convention also includes equipment. Moreover, Article 4, paragraph 2 (b) requires exemption from all customs duties, inspection fees and other duties or taxes, whereas Article 24 (b) of the Convention mentions only customs duty;

(iv) Article 4, paragraph 2 (a) of the standard clauses refers to aircraft stores available in the State concerned, *i.e.*, not necessarily imported and not carried on an arriving aircraft. Apparently this provision is not based on Article 24 of the Convention nor on paragraph 4.13 of Annex 9, Fourth Edition,[7] the latter referring to imported stores only. Both paragraph 2 (a) and 2 (c) of Article 4 of the standard clauses appear to stem from paragraph 2 of the Council's Resolution referred to above, although aircraft stores, as such, are outside the scope of this Resolution. In fact, the "loan" of aircraft equipment and spare parts (para. 4.12 of Annex 9, Fourth Edition) and the "import" of stores (para. 4.13 of Annex 9, Fourth Edition) are not covered in the standard clauses.

ARTICLE 5

The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

NOTE: Only a minority of bilateral agreements between ICAO States contain a provision stipulating that regular aircraft equipment, spare parts, fuel, lubricating oils and stores may only be unloaded from an aircraft of a contracting party in the territory of another contracting party subject to the approval of the customs authorities of that territory. Some States may consider this article unnecessary on the grounds that they are adequately

[7] (The Council of ICAO adopted, on 22 June 1960, Amendment No. 3 to Annex 9, Third Edition, to be transmitted to contracting States shortly. This Amendment, unless disapproved by the majority of contracting States, will become effective on 1 November 1960 and will be incorporated in the Fourth Edition of Annex 9 to become applicable on 1 March 1961.)

protected by the provisions of Article 24 (b) of the Convention as far as spare parts and aircraft equipment are concerned and of paragraphs 4.13 and 4.14 of Annex 9, Fourth Edition, as far as stores and ground equipment are concerned. It is recalled that aircraft equipment, spare parts, stores and ground equipment are all defined in Chapter 1 of Annex 9.

ARTICLE 6

Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

NOTE: ECAC decided not to include a provision in the standard clauses dealing with entry and clearance regulations with respect to passengers, crew and cargo, Article 13 of the Convention being deemed sufficient. However, it agreed to the insertion of a clause indicating that passengers in direct transit not leaving the aircraft should be subjected only to a simplified form of control and that baggage and cargo should be exempt from customs duty, inspection fees and similar charges. A majority of bilateral agreements between ICAO States do not contain such a clause. Some States may consider this article unnecessary on the ground that the provisions of Chapter 5 of Annex 9, Fourth Edition, should be adhered to by all contracting States and that no useful purpose would be served by singling out one or two points on this matter for inclusion in bilateral agreements.

ARTICLE 7

1. The tariffs to be charged by the airlines of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors including cost of operation, reasonable profit, and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible be reached through the rate-fixing machinery of the International Air Transport Association.

3. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said authorities.

4. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this Article, or if during the first 15 days of the 30 days' period referred to in paragraph 3 of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this Article and on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article 13 of the present Agreement.

6. Subject to the provisions of paragraph 3 of this Article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

NOTE: These clauses differ from the tariff provisions of most bilateral agreements concluded between ICAO States in one or other of the following ways, and it would appear that each State would have to decide for itself whether the standard clauses are suitable for adoption in framing future agreements:

(i) Elimination of the evaluation criteria relating to the characteristics of services, such as speed, accommodation, etc. (generally included in bilateral agreements in a provision corresponding to paragraph 1 of Article 7 above);

(ii) Omission of any reference to agency commissions (referred to in some agreements in a provision corresponding to paragraph 2 of Article 7; although there was considerable support among European States for including the question of agency commission rates in the matters to be agreed by airlines for the reason that agency commissions were an important part of the tariff structure and might have particular value in cases where IATA failed to agree on tariffs, the 3rd Session of ECAC decided that it should be deleted, as it was not generally included in bilateral agreements; see Doc. 7977, ECAC/3-1, para. 65 (b), p. 36);

(iii) Retention of a provision concerning the possible reduction of the period of 30 days for submitting agreed tariffs for the approval of the aeronautical authorities before the proposed date of the introduction of the tariffs (Article 7, paragraph 3; many agreements do not contain a provision corresponding to this paragraph while other agreements specify a period longer than 30 days);

(iv) Inclusion of a provision stating that tariffs should remain in force until new tariffs have been established (Article 7, paragraph 7).

ARTICLE 8

Either Contracting Party undertakes to grant the other Party free transfer, at the official rate of exchange, of the excess of receipts over expenditure achieved on its territory in connection with the carriage of passengers, baggage, mail shipments and freight by the designated airline of the other Party. Wherever the payments system between Contracting Parties is governed by a special agreement, this agreement shall apply.

NOTE: In Europe, the transfer of funds from one country to another is covered by an OEEC agreement, but some ECAC member States are not party to the agreement or have reservations concerning some of its provisions. Although there was some doubt as to the value of Article 8 above, ECAC finally decided to retain it (see Doc. 7977, ECAC/3-1, para. 65 (c), p. 36). Few bilateral agreements concluded between other States contain a provision dealing with the facilitation of currency exchange.

ARTICLE 9

In a spirit of close cooperation, the Aeronautical Authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Annexes thereto.

NOTE: This is a general provision dealing with the requirement for periodic consultation between aeronautical authorities. Many agreements contain, in addition to the general provision, consultation clauses with respect to specific administrative matters, *e.g.*, tariffs, amendments to agreement, etc., or consultation clauses in connection with the implementation of capacity provisions. Some agreements concluded between ICAO States include the latter types of clause, but not the general clause. In any case it is unlikely that States in general would have serious objections to adopting a provision along the lines indicated in Article 9 above.

ARTICLE 10

1. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party; such consultation, which may be between aeronautical authorities and which may be through discussion or by corre-

spondence, shall begin within a period of sixty (60) days of the date of the request. Any modification so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Modifications to routes may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties.

NOTE: There exists a large measure of uniformity in the procedure used by ICAO States for bringing about amendments to bilateral agreements. Article 10 of the standard clauses conforms to the general pattern, but in drafting this article, ECAC had considered the need for making a distinction between amendments to the body of the agreement and amendments to the annex: in the former case, a procedure identical with that for bringing the agreement into effect might be required for certain countries, whereas in the latter case, amendments can be dealt with simply by means of an exchange of notes in some countries. The Conference also considered that consultation might be carried out in certain simple cases by correspondence and that in others verbal consultation with 60 days' notice would be necessary.

ARTICLE 11

The present Agreement and its Annexes will be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

NOTE: A majority of bilateral agreements between ICAO States contain a provision of this kind with variations in wording. The differences do not seem material except with respect to the phrase "will be amended" in the standard clause. Virtually all existing bilateral agreements use the phrase "shall be amended."

ARTICLE 12

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

NOTE: With minor variations in wording, a large majority of bilateral agreements between ICAO States use in whole or in part the above phraseology.

ARTICLE 13

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this present Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral body.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

NOTE: A substantial number of bilateral agreements concluded between ICAO States contain a provision requiring direct negotiation or consultation between the parties as a first step towards settling a dispute (paragraph 1 of Article 13). As a second step, a majority of agreements refer to ICAO, its Council, or a tribunal established within ICAO, while other agreements refer to some other person or body, as the authority for rendering an advisory report or a decision. With few exceptions, all bilateral agreements, irrespective of whether direct negotiation or reference to the Council of ICAO forms part of the agreed procedure, contain a clause on arbitration either as an alternative to a decision by the Council or as the principal method of settling disputes (paragraph 2 of Article 13). These agreements invariably include a provision concerning the States' obligation to comply with decisions given (paragraph 3 of Article 13). In the light of the foregoing, the standard clauses recommended by ECAC appear to conform to the general pattern. Nevertheless it would seem that each State would have to consider whether the said article, lacking in any specific reference to ICAO or its Council in the first sentence of paragraph 2 and containing in the latter part of that paragraph a procedure for establishing arbitral machinery used by a limited number of States, would be suitable in framing future agreements.

AERODROME MANUAL TO GUIDE AIRPORT AUTHORITIES IN THE JET AGE

In the new Aerodrome Manual issued by the International Civil Aviation Organization, five parts attempt to provide guidance to the aerodrome authorities of its 83 Member governments who are working to furnish ground facilities and aids for civil aviation—especially the new long-range jet-powered aircraft which have cut traveling time between centers all over the world nearly in half during the past year.

Part 3 contains data on aircraft characteristics, graphs of take-off and landing performance of turbine-powered aircraft—taking into account gross weight, aerodrome elevation and temperature and runway slopes—provide a suitable means of assessing the runway length requirements at any particular location of some 15 types of turbine props and turbine jet aircraft now in operation or about to be introduced. Factors affecting take-off weight of those aircraft are discussed extensively and the basic lengths required for the take-off and landing of 36 piston-engined aircraft types currently in use are listed in a table.

Information on weights and landing gear characteristics of 49 different aircraft are given to assist aerodrome engineers in the design and evaluation of pavements.

Part 4 describes in detail methods of evaluating pavement strengths as presented by the United Kingdom and the United States. The Load Classification Number (LCN) System, applying both to pavement strength and aircraft load, is based on plate bearing tests; illustrative descriptions of the equipment used and curves for the correlation of test results with the landing gear characteristics of different aircraft are given. Also included is a method for pavement evaluation surveys, predicated upon environmental features, both climatic and topographic, foundation conditions, quality of materials and construction procedures.

Part 5 contains descriptions of expeditious and economic methods of conducting surveys of aerodrome to provide elements for the production of ICAO aerodrome obstruction charts, as prescribed by Annex 4 (Aeronautical Charts) to the Convention on Civil Aviation and for the determination of

aerodrome data required by Annex 14 (Aerodromes). The United States presents a simplified method and the use of photo-teodolites is described by the United Kingdom.

Part 7 gives guidance on rescue and fire fighting services at aerodromes. Equipment, ambulance and medical facilities, organization and training procedures, amounts and characteristics of extinguishing media are discussed.

Part 10 provides guidance on physical characteristics, visual ground aids, and other data on helicopter aerodromes. Basic criteria considered essential to the selection of heliport sites are covered, including the commercial, technical and social factors which must be evaluated. A forecast of heliport requirements of the future, including those of multi-engined helicopters, is also given. Material submitted by Belgium, France and the United States is presented and includes charts of a variety of different heliport sites.

It is foreseen that the Manual will in the future be extended to cover other subjects related to aerodromes and visual ground aids field. The parts that have now been published—in English, French and Spanish, the three official languages of ICAO—will be of interest not only to engineers normally engaged in aerodrome planning, design and construction, but also to airport managers, aircraft operators and, generally, to all those connected with aviation.

ARTICLE 77 OF THE CHICAGO CONVENTION — JOINT OWNERSHIP AND OPERATION OF INTERNATIONAL AIR SERVICES

1. In December 1959 the League of Arab States, referring to Article 77 of the Chicago Convention, requested that Council determine in what manner the provisions of the Convention relating to nationality of aircraft shall apply to aircraft to be operated by a proposed Pan-Arab Airline. The League also requested advice on the obligations of the States participating in the proposed enterprise towards other States into whose territory the airline would operate.

1.1 On 11 March 1960 Council decided that the detailed study of the problems that would have to be considered in making a determination and giving the advice requested by the Arab League should be entrusted to a Panel of Experts to be designated by the President.

1.2 On 16 March 1960 Council settled the terms of reference of the Panel.

2. The Panel was duly appointed and it met in Montreal from 23 to 30 June, 1960. Its Report is set out hereafter at length.

3. In interpreting the provisions of Article 77 of the Chicago Convention, the Panel was unanimous in holding that:

(a) an international operating agency to which Article 77 refers must be composed only of States parties to the Chicago Convention (para. 7 of the Report);

(b) the expression "provisions of this Convention relating to nationality of aircraft" means not only Articles 17 to 21 but also all other articles of the Convention which either expressly refer to nationality of aircraft or imply it by the use of such expressions as "aircraft of a contracting State" or "the State in which an aircraft is registered" (para. 8 of the Report);

(c) a determination made by the Council pursuant to Article 77 will be binding on all contracting States if the determination is made within the scope of the authority given to the Council by Article 77 (para. 9 of the Report).

4. The Panel recognized that an international operating agency and its property, including any aircraft owned by it, will have an international as

distinct from a national character and therefore, except under special arrangements, would not be subject to the laws of any particular State, including laws relating to registration of aircraft (para. 10 of the Report). Therefore, the Panel considered the question of registration of the aircraft of such an agency otherwise than in a particular State. The majority of the Panel considered that it would not be lawful for the aircraft of an international operating agency to be registered either with the agency itself or with an international organization, for that would mean substituting the obligations and undertakings of such an agency or such an organization in place of those which under the Convention rest on a sovereign contracting State in respect of aircraft registered with it (para 12 of the Report).

4.1 The majority view also was that it would not be sufficient for lawful operation of the aircraft of an international operating agency if they were recorded on a register jointly established by the contracting States composing the agency and even if one of those States were so to extend its legislation that all its aeronautical laws would apply to those aircraft in the same manner as they would apply to an aircraft having the nationality of that State. In such case the aircraft would have no nationality and in the opinion of the majority one of the fundamental principles of the Chicago Convention is that aircraft must have a nationality whether or not they are operated by international operating agencies (para 12 of the Report).

4.2 A contrary opinion in the Panel[8] was that the Convention contemplates the possibility that aircraft operated by an international operating agency might have no nationality. According to this view there should be further exploration of the practical possibility for an international operating agency to operate its aircraft (without the aircraft having a nationality) in conditions which would be as satisfactory for third countries members of ICAO as if aircraft registered in a contracting State were involved. In respect of the views mentioned in paragraphs 4 and 4.1 above, two members of the Panel felt that the study made by the Panel of the practical aspects was merely a preliminary one and that there were still many practical, technical and legal problems to be given detailed consideration and that, consequently, the views in those two paragraphs appeared to be premature.

5. The Panel was unanimous in the view that if the aircraft of an international operating agency were registered in a contracting State there would be no problems arising with respect to application of the provisions of the Convention relating to nationality of aircraft and that there would probably be no necessity for the Council to make a determination under Article 77 of the Convention (para. 14 of the Report).

6. As regards the specific question put by the Arab League as to the extent of obligations of States participating in an international operating agency towards other States into whose territory the aircraft of the agency will operate, the Panel, subject to its understanding of the question as stated in paragraph 15 of its Report, was of the opinion that only the contracting State in which the aircraft of the agency is registered will have obligations under the Chicago Convention and that these will be no different from the obligations of that State with respect to aircraft operated by its national airline (para. 15 of the Report).

7. It is suggested that it might be convenient to consider separately, in the light of the Report of the Panel, what action Council may wish to take with reference to—

(a) the request made by the League of Arab States;

(b) the general question of the interpretation of Article 77 of the Chicago Convention and Council action thereunder for any future case.

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[8] See paras. 13.1 and 13.2 of the Report.

7.1 As regards (a) above, it is suggested that the request of the Arab League can be met by transmittal of the Report of the Panel to the League with the comments of the Council. These comments might include concurrence in the opinion of the Panel that an international operating agency to which Article 77 of the Chicago Convention refers must be composed only of States parties to the Convention. In this view there is no determination to be made at present by the Council under the last sentence of Article 77 of the Convention, since the composition of the proposed Pan-Arab Airline is to include States not parties to the Convention.

8. As regards the question at (b) in paragraph 7 above, it will be recalled that the subject of problems of nationality and registration of aircraft operated by international operating agencies was referred by the Council to the Legal Committee in 1956 and is already included in the work program of the Committee. In this connection, attention is invited to the differences of view in the Panel described in paragraph 4.2 above, and also to the fact that the majority of the Panel does not rule out the possibility that a case might be presented to the Council in the future requiring a determination to be made under Article 77 in view of some particular difficulty which might have arisen in regard to the application of the provisions of the Convention relating to nationality of aircraft to the aircraft of an international operating agency.[9] For all these reasons it is suggested that as regards the general question mentioned at (b) in paragraph 7 above, the Report of the Panel might be forwarded to the Legal Committee so that it might be taken into consideration in the studies which the Legal Committee might, in due course, make of the subject already included in its work program. The Committee could also make recommendations as to any solution of the problems involved, if it found any inadequacy in the provisions of the Convention for facilitating operations of aircraft by international operating agencies or international organizations.

REPORT OF THE PANEL OF EXPERTS ON ARTICLE 77

I. MEETINGS OF THE PANEL

1. The Panel of Experts on Article 77 established by the Council on 16 March 1960 met in Montreal from 23 June to 30 June 1960, and held 9 meetings.

1.1 The Panel was composed as follows:

Dr. T. F. Reis, Brazil
Mr. Finn Hjalsted, Denmark
Mr. M. Pascal, France
Dr. F. U. Schmidt-Ott, Federal Republic of Germany
Mr. I. Narahashi, Japan
Prof. D. Goedhuis, Netherlands
Mr. T. D. Salmon, United Kingdom
Mr. R. P. Boyle, United States of America

1.2 Prof. D. Goedhuis was elected Chairman of the Panel.

II. TERMS OF REFERENCE

2. The terms of reference of the Panel, as decided by the Council, were the following:

1. To advise the Council on the interpretation and application of the last sentence of Article 77 of the Chicago Convention indicating, and suggesting solutions for, the problems involved.

[9] See para. 14 of the Report.

2. To prepare a draft "determination" by the Council pursuant to the last sentence of Article 77 of the Convention.
3. To advise as to the extent of obligations of States participating in an international operating agency towards other States into whose territory the aircraft of that agency will operate.
4. To make any other observations or recommendations the Panel might consider appropriate.

III. Documentation

3. In Appendix A are listed the documents examined by the Panel. (Omitted)

IV. Problems Examined by the Panel

4. The first task of the Panel, under its terms of reference, was to ascertain the problems involved on the interpretation and application of the last sentence of Article 77 of the Chicago Convention.

5. Article 77 in question reads:

> "Joint operating organizations permitted
>
> Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies."

6. The main problems examined by the Panel were:

(A) The meaning of the expression "international operating agencies," which occurs in the last sentence of Article 77.

(B) The meaning of "provisions of this Convention relating to nationality of aircraft."

(C) The legal status and the scope of the determination to be made by the Council under Article 77.

(D) The legality and feasibility of registration of aircraft otherwise than on a national register. In this connection particular consideration was given to the provisions of the Chicago Convention, although other related international agreements also were considered.

V. Results of Examination of the Problems

(A) *Meaning of "international operating agencies"*

7. The Panel observed that this expression is not defined in the Chicago Convention; and that Article 77 refers also to "joint air transport operating organizations" but does not define this expression. The conclusions of the Panel were:

1. An international operating agency to which Article 77 refers must be composed only of "contracting States," that is to say, States parties to the Chicago Convention;
2. The body contemplated in the last sentence of Article 77 has an international character and is not constituted under the national law of any particular State: if it were, then it would be indistinguishable from any airline company constituted under such law, and its aircraft could be registered thereunder. Therefore, there would be no problem requiring a determination by the Council as to the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by that body.

3. A suggestion was made that the legislative history of Article 77 could support the view that such an agency can be constituted only by contiguous States for operating air services only between their territories. However, on the basis of the evidence before it, the Panel did not believe that such limited interpretation was justified.

(B) *Meaning of "provisions of this Convention relating to nationality of aircraft"*

8. The Panel noted that this expression could be given either a narrow or a wider interpretation. Under the former they would refer only to the provisions of Article 17 to 21 on the ground that they appear in Chapter III of the Convention which is entitled "nationality of aircraft." In the opinion of the Panel, the expression should be interpreted also as referring to all other articles of the Convention which either expressly refer to "nationality of aircraft" or imply it by the use of such expressions as "aircraft of a contracting State" or "the State in which an aircraft is registered."[10]

(C) *The legal status and the scope of the determination to be made by the Council under Article 77*

9. In the opinion of the Panel the expression "the Council shall determine" does not, having regard to the meaning of the word "determine" and having regard also to the purpose of the provision, denote anything else but "decide." In other words, a determination made by the Council pursuant to Article 77 will be binding on all contracting States if the determination is made within the scope of the authority given to the Council by Article 77.

9.1 As regards the scope of the Council's determination, it was agreed that, in deciding upon this, regard must be had to the principle of interpretation of treaties, generally accepted in international law, according to which, if the meaning of a provision in a treaty is ambiguous, that interpretation is to be preferred which is the least onerous for the contracting States.[11]

(D) *Legality and feasibility of registration of aircraft otherwise than on a national register*

10. This question arises because an international operating agency, being constituted under an agreement between States and not under a national law, and its property, including any aircraft which it owns, being owned by more than one State, the entire concern including the aircraft will have an international as distinct from a national character and, therefore, except under special arrangements, would not be subject to the sovereignty and laws of any particular State including laws relating to registration of aircraft.

Nationality and registration of SAS aircraft

11. The Panel noted that the Scandinavian Airlines System, which represents close coordination between the three Scandinavian States in regard to international air transportation, owns aircraft but that the aircraft are registered in one or other of those States. However, this solution avoids, rather than solves, the problem under discussion, namely, the legality for the purpose of the Chicago Convention of aircraft being registered otherwise than in a national State. This problem is peculiar only in the case of an international operating agency constituted by contracting States, and SAS is not such an agency since it is only a consortium between the airlines of the three Scandinavian States. At the same time, if an international operat-

[10] The Panel examined closely the various articles of the Convention set out in Working Draft No. 5. Agreeing that they were all articles "relating to nationality of aircraft," the Panel considered that they should be supplemented by mention of Articles 7 and 16.

[11] An authoritative statement of this principle is contained in Oppenheim, 8th Edition, Vol. I, page 953.

ing agency has its aircraft registered in its component States under a system of allocation of those aircraft to particular national registers, as is done by SAS, no problem will arise under the Chicago Convention.

Registration with an international operating agency or with an international organization

12. The Panel next considered whether, having regard to the provisions of the Chicago Convention, it would be lawful for aircraft to be registered either with an international operating agency itself or with an international organization authorized by its constituent instrument to register aircraft. After close examination of this question, the Panel came to the conclusion that recognition of the legality of such registration would be tantamount to substituting the agency or the organization in place of a sovereign State in so far as concerns the obligations which the Convention imposes on the State of registration of an aircraft. In the opinion of the Panel, the Council cannot, under Article 77, make a determination which would have the effect of substituting the obligations and undertakings of an international operating agency or an international registering authority for those of a sovereign contracting State.

12.1 Having regard to the aforesaid conclusion, it became unnecessary for the Panel to take decisions on certain further questions which it discussed, such as—

(a) whether it would be practicable for the international body with which aircraft is registered to carry out the various obligations normally discharged by the State of registration not only under the Chicago Convention but also under the various annexes to that Convention and under the multifarious national rules and regulations relating to operation of aircraft;
(b) the legality of registration with an international body having regard to the principles of general international law, particularly in relation to the legal obligations, if any, of a State of registration with regard to criminal offenses taking place on board their aircraft and in relation to civil law problems arising out of acts and events on board; and
(c) the provisions of international agreements other than the Chicago Convention related to international civil aviation.

Registration on a joint register but aircraft subject to national law of a given State

13. The following solution was suggested to the Panel: that the contracting States composing the international operating agency would arrange that the aircraft jointly owned by them and to be operated by the agency will be recorded on a register jointly established by those States and maintained by them and that one of those States will extend its legislation so that all its aeronautical laws will apply to those aircraft in the same manner as they would apply to an aircraft having the nationality of that State. Under this scheme, a specific feature would be that there would be no international organization established with a legal personality to act as the registering body so that there would be no question of substituting the responsibilities of that body in place of the responsibilities of a State of registration under the Chicago Convention (such substitution not being admissible as decided by the Panel—see paragraph 12 above). The majority view of the Panel, however, was that this solution was not admissible under the present text of the Chicago Convention, because the aircraft in question would have no nationality. In their opinion one of the fundamental principles of the Chicago Convention is that aircraft must have a nationality, whether or not they are operated by international operating agencies. Therefore, the power of the

Council under the last sentence of Article 77 must be limited to determining the *manner* in which the provisions of the Convention relating to nationality of aircraft apply and does not extend to authorizing operation under the Convention of an aircraft without nationality.

This view was predicated upon the fact that the Chicago Convention is a treaty entered into between sovereign States on the basis of a reciprocal exchange of obligations and privileges between such States. Consequently, only aircraft having the nationality of contracting States are entitled to the privileges of the Chicago Convention since by the terms of that treaty such privileges are given only to States as distinguished from international organizations.

This view is, in the opinion of the majority, supported by the principle of interpretation referred to in paragraph 9.1. An interpretation of Article 77 to the effect that the Council can, by a determination, bind States to accept that aircraft without nationality may be operated under the Convention, would impose an onerous obligation upon the contracting States which it is not necessary to impose, since other less onerous interpretations are possible.

13.1 A contrary opinion advanced was that the Convention contemplates the possibility that aircraft operated by an international operating agency might have no nationality. According to this view, the language adopted in the last sentence of Article 77 would otherwise have been much simpler: for example, it might have read as follows:

> "The Council shall decide how the nationality of aircraft operated by international operating agencies shall be determined."

However, according to those holding this view, the Council, in making the determination entrusted to it by the last sentence of Article 77, must base its decision not only on the legal possibility whereby aircraft operated by an international operating agency would not have a specific nationality, but also on the practical possibility for an international operating agency to operate such aircraft in conditions which would be as satisfactory for third countries members of ICAO as if aircraft registered in a contracting State were involved. If it were concluded that, from the practical point of view, such an operation would not be satisfactory, the Council would have to reject any solution which did not attribute a definite nationality to each aircraft operated by an international operating agency.

13.2 Two members of the Panel considered that the study made by the Panel of the practical aspects of the solution mentioned in paragraph 13 was merely a preliminary study since there were still many practical, technical and legal problems to be given detailed consideration and that consequently, any conclusion with regard to this solution appeared to them to be premature. The same opinion was expressed by them with regard to paragraph 12. On the other hand, the majority considered that the conclusions reached by the Panel made it unnecessary to study those problems further at the present time. They felt that such further study should only be embarked upon if at some time in the future the circumstances of a particular case presented to the Council for determination led the Council to believe that such a study should be made.

VI. Draft "Determination"

14. In view of the conclusions reached as to the problems involved and the possible solutions in relation to the interpretation and application of the last sentence of Article 77 of the Chicago Convention, as described above, the majority of the Panel considered that the only lawful manner in which an aircraft operated by an international operating agency may be registered is by registration in a contracting State. It appeared to the Panel initially

that if the aircraft were so registered, there would be no problems arising with respect to the application of the provisions of the Convention relating to nationality of aircraft to the aircraft of an international operating agency; and this preliminary view was confirmed by the detailed consideration which the Panel gave to all such articles of the Convention. If the aircraft of an international operating agency were registered in a contracting State, there would probably be no necessity for the Council to make a determination under Article 77. Therefore, the Panel has not found it possible to prepare a draft "determination" by the Council pursuant to the second item of its terms of reference; but the Panel does not rule out the possibility that there might be some case presented to the Council in the future which might require a determination to be made under Article 77 in view of some particular difficulty which might have arisen with regard to the application of the provisions of the Convention relating to nationality of aircraft to the aircraft of an international operating agency.

VII. Obligations of Participating States

15. The third item of the terms of reference of the Panel concerns the extent of obligations of States participating in an international operating agency towards other States into whose territory the aircraft of that agency will operate. The Panel understands that the obligations in question are only those arising from the Chicago Convention and do not include others, for example, any obligations under any bilateral agreements which might be made by the States composing the agency with other States into whose territory the aircraft of the agency will operate. As regards this, the opinion of the Panel is that only the contracting State in which the aircraft of the agency is registered will have obligations under the Chicago Convention and these will be no different from the obligations of that State with respect to aircraft operated by its national airline.

II. INTERNATIONAL AIR TRANSPORT ASSOCIATION

REPORT OF THE LEGAL COMMITTEE TO THE ANNUAL GENERAL MEETING

The Legal Committee of the International Air Transport Association reported on the progress in the development of a number of proposed international conventions affecting many aspects of the air industry of the world.

Third Party Liability in the Field of Nuclear Energy

The regional convention on third party liability in the field of nuclear energy developed by the Organization for European Economic Cooperation (OEEC) was signed by Denmark, Luxembourg, The Netherlands, Switzerland and the United Kingdom. The Convention now stipulates that a carrier would not be liable as operator of a nuclear installation by mere storage of nuclear materials incidental to their carriage. The lack of a clear indication on this point had been one of IATA's main objections to the convention.

Another draft convention for world wide application on the same subject has been circulated recently by the International Atomic Energy Agency to its member states.

International Carriage by Other Than the Contracting Carrier

From the point of view of the air transport industry, the draft Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier (i.e.,

the actual carrier) is by far the most important topic on the current agenda of the ICAO Legal Committee. It is expected that the ICAO Committee will submit the Convention to a Diplomatic Conference as early as possible in 1961.

AERIAL COLLISIONS

A new draft convention on aerial collisions, developed by an ICAO Legal Sub-Committee, will need considerable refinement before it can be finalized. While the Committee has commented on certain aspects of this convention such as its scope, the person liable under it, nature of liability, apportioning of damages, limitation of liability and the location of the forum, the subject of aerial collisions requires further study, and the Committee expects to deal with it at forthcoming meetings.

STANDARD CLAUSES FOR BILATERAL AGREEMENTS

Standard clauses for bilateral agreements on scheduled air services have been drawn up by the European Civil Aviation Conference (ECAC) and recommended to the Council of ICAO for examination.

Should the ICAO Council undertake to examine the standard clauses with a view to recommending them to member states, the Committee hopes to co-opt experts in bilateral air transport agreements in order to study the clauses and formulate an IATA position for submission to ICAO.

AIRWORTHINESS CERTIFICATES

Ten European nations have signed the European Civil Aviation Conference (ECAC) multilateral agreement on airworthiness certificates, which was opened for signature in the Spring of 1960.

The convention provides for reciprocal acceptance of certificates of airworthiness for aircraft manufactured within the territories of ECAC member states, but does not apply to aircraft registered there. While this limits the effectiveness of the convention it can, not withstanding its regional character, be a very useful instrument.

TRAFFIC MATTERS

Documentation for Group Travel: The Committee has re-affirmed its previous position that it is desirable to issue separate tickets to all interline passengers, even though they be traveling as a group. If any airline wished to issue a single ticket for group travel, it is free to do so for on-line carriage, bearing in mind, of course, that this might involve the loss of the liability limitation under the Warsaw Convention.

Liability Clauses for Use in Charter Agreements: Suggested liability clauses for insertion in charter agreements between IATA members and outside persons and outside institutions other than the air carrier, have been circulated for use by all IATA members in charter agreements. They are not, however, recommended as mandatory.

REPORT OF THE TRAFFIC COMMITTEE TO THE ANNUAL GENERAL MEETING

It was asserted by the Chairman of the IATA Traffic Advisory Committee, V. H. L. Dubourcq, that scheduled international airlines are opposed to the indiscriminate use of commercial credit cards for the purchase of air tickets because of the comparatively large sums involved in air transport purchases; and because air fares contain no margin whatever for collection fees, service charges and the usual additional commissions paid to commer-

cial credit organizations. Such credit systems require the supplier to pay the carrying charges which can only lead to pressure for higher fares.

Adequate credit facilities are available to the public through the credit plans of the individual airlines or through their joint Universal Air Travel Credit Plan (UATP). Neither involve extra payments by the airlines and both require deposits.

Among the subjects discussed, were the following:

PARIS CONFERENCE

A Paris Conference was necessitated by the failure of the airlines to agree on fares and rates matters during the normal 1959 Fall session in Honolulu. It managed to solve practically all of the points at issue. In addition to closing most fares and rates, it provided for the further extension of low-fare services and special excursion rates over many routes. It further established two important principles; that there should be only two basic classes of service, a first class and a lower-fare class to be called either tourist or economy; and that fares should be based on the jets, with propeller-driven aircraft granted advantages of either price or service.

CONFERENCE VOTING PROCEDURES

Following the decision of the Executive Committee to separate voting on passenger and cargo subjects, the TAC has studied the possibility of further refinement in voting procedures. There has been considerable divergence of views as between some members who feel that voting on joint Conference matters should be limited to those members actually operating services between the Conferences in question and others who argue with equal strength that all members of the individual Conferences affected should be permitted to vote on joint Conference resolutions. While the Committee has therefore been unable to recommend any further changes, it is unanimous in recognizing the seriousness of the situation and intends to take urgent corrective action if any instances of irresponsible use of voting rights occur.

GOVERNMENT RESERVATIONS ON RESOLUTIONS

A number of governments still show a tendency to make minor alterations to Conference resolutions. While their right to approve or disapprove these resolutions is unchallenged, these alterations and reservations, however minor they may appear, cause confusion and difficulty for all carriers. At the same time, some airlines have on occasion attempted to secure by means of government action points which they have failed to obtain through the Conference machinery and some government reservations have operated to give individual carriers competitive advantages which were not intended by the Conferences. The Cannes Traffic Conferences will therefore be asked to consider a suggestion that any alterations made by a government to a resolution will in fact make it automatically void. If the Conferences feel that such an action would be too drastic, alternative proposals will be put forward.

FREE AND REBATED TRANSPORT

Under the terms of Resolution 200, carriers are authorized to give free or reduced rate transport if ordered to do so by a recognized government authority. To eliminate any possibility that government directives, issued on a confidential basis, might be used to nullify the requirements of other resolutions, the Cannes Conference will be asked to agree that government

directives of this kind be filed with the Conference Secretaries and be open for inspection by other carriers.

SOUTH AMERICA FARES

For more than a year past, there have been serious attempts by IATA members, governments and non-IATA carriers in the area to remedy the serious instability of fares on routes serving South America and connecting it with the rest of the hemisphere. As the result of several meetings with the other parties concerned, the Honolulu Conferences agreed certain fares which were to be put into effect provided other carriers would adhere to published fares at a stated percentage below these levels. While some of the non-IATA carriers concerned have tended to adhere to these terms, it is not yet clear whether all governments in the area are ready to take the necessary steps to stabilize the situation. Meanwhile, IATA members have officially filed their agreements and, even though these give definite advantages to non-IATA airlines, will adhere to them completely if the latter do not pursue a policy of unrestricted rate-cutting.

COMPUTER PROGRAM

The first two stages of a program to use electronic computer equipment to calculate all fares and rates used by IATA airlines have now been completed. A Manual of Shortest Operated Mileages was completed last year and Trial Fares Tables will be submitted to the Cannes Conferences. It will then be up to the Conferences to state whether they wish to use this method on a full scale basis in subsequent years.

The computer program is designed to replace the present cumbersome practice whereby each carrier is compelled to employ a large number of staff over an extended period to work out constructed fares which it may require for selling purposes. While these are calculated in accordance with agreed Conference rules, the results produced by individual carriers are not always identical and therefore give rise to a vast exchange of signals and correspondence. All of this work must be done before the carrier can file or publish its tariffs.

By using computer techniques it is hoped to produce all the fares and rates required by any carrier a few days after Conference agreement has been reached.

TRAFFIC HANDLING AND ACCOUNTANCY WORKING GROUP AND RESERVATIONS WORKING GROUP

These two groups have continued their quiet but effective work, maintaining close cooperation with the appropriate Committees of the Air Transport Association of America. The terms of reference of the THWG will be altered as a result of the Executive Committee decision to establish a Physical Handling Group.

In the meanwhile, the European Traffic Handling Committee, as a Committee of Traffic Conference 2, has done a great deal to make the handling of passengers and other load smoother and more economical. It is now making a study, among other matters, of average baggage weights.

REPORT OF THE TECHNICAL COMMITTEE TO THE ANNUAL GENERAL MEETING

The Technical Committee of IATA reported that the extensive joint efforts of the airlines in the fields of operations, engineering, communications and meteorology have been completely occupied during the past year

by the introduction of jet transports and that jet operations are now being carried on satisfactorily in all parts of the world, although a number of problem areas still demand special study and action by carriers, manufacturers and government authorities.

Mr. Knut Hagrup, the Committee Chairman (Vice President Operations, Engineering and Maintenance of Scandinavian Airlines System) stated that jet routes have been well consolidated from the point of view of safe operation, but that much remains to be done to improve the reliability and economy of high speed, high altitude flying.

One of the Committee's principal projects for the coming year is a full scale international symposium on the supersonic aircraft, designed to ensure that airlines will have a clear idea of what their needs will be, so that when the supersonic aircraft does arrive, it will be tailored to fit those needs; and that the potential deficiencies in support equipment, aids and facilities can be pinpointed in order to avoid future bottlenecks.

Industry will continue its long range efforts to lower the weather limits on takeoff and landing and ultimately to achieve 100 per cent all-weather operations. Another long range objective is the complete elimination of visual flight rules.

The airlines look forward to continued improvement in air traffic control, but expect no revolutionary advances. However, it was asserted that the shortage of trained air traffic control personnel is still a major bottleneck and steps must be taken to attract and keep properly trained personnel as controllers.

Among the targets of the airlines' joint technical effort in the coming years, are the following:

1. Concerted effort to apply advanced production planning and control techniques to airline maintenance and overhaul, "one of the few remaining areas of operations where there may still be large potential savings";
2. Revisions of codes governing obstructions near airports to meet the new requirements of jet flight and to clear away television towers and masts which have grown up "uncomfortably close" to major airports;
3. Accelerated regional and local effort to obtain proper planning and implementation of runways, facilities and ground aids required for jet aircraft;
4. Elimination of air space blockages by military authorities which seriously disrupt civil operations or force airlines to make substantial detours.

The following is a summary of the complete report of the IATA Technical Committee to the 16th Annual General Meeting of the Association.

IATA's Technical activities over the past decade have developed in step with a continuously changing and advancing industry. Their organization and administration have been moulded to fit the specific circumstances and problems for which the airlines have had to find joint solutions.

It is impossible to present a comprehensive review of IATA's Technical work on an annual basis because the results of these activities cannot be compressed into a specific period of time, but must be measured against their contribution over a span of years. One yardstick of its value, however, is the stature and recognition now afforded IATA in the Technical field by governments, other institutions and organizations, research establishments and manufacturers throughout the world.

To be effective, the cooperative Technical work of the airlines cannot be limited to carriers alone, but must be coordinated with other interests whose roles are equally indispensable to international civil aviation. IATA therefore continues to maintain and strengthen its cooperation with the Air

Transport Association of America (ATA), Société Internationale de Télécommunications Aéronautiques (SITA), Aeronautical Radio Inc. (ARINC) and International Aeradio Ltd. (IAL), international governmental organizations such as the International Civil Aviation Organization (ICAO), International Telecommunication Union (ITU) and World Meteorological Organization (WMO). In addition, IATA has been in continuous touch with the civil aviation administrations of many countries and with manufacturers of airframes, engines, airborne and support equipment. In all cases, this cooperation has involved both day-to-day problems and consideration of the future.

Due to the increasing complexity of airline operations in the jet era, the past year has been a very busy one. IATA has held 20 large-scale meetings of airline technical specialists to exchange views and experience and to develop both worldwide and regional policies; and IATA Technical experts have represented the industry itself at 22 meetings of other international organizations. In addition, smaller working and study groups have applied themselves to specific projects and individual rapporteurs have done detailed studies of many problems.

New Operational and Technical Policies

IATA Technical effort during the past year has been completely preoccupied with the introduction of jets on a number of the world's air routes. The airlines' common policies and philosophies in this field, as summarized in the IATA Technical Policy Manual, have been completely revised in the light of the greater knowledge and practical operating experience with jets which has become available. At the same time, the demand on IATA for guidance and advice on the requirements of jet operations has led to the preparation of a number of reference documents dealing in more detail with current Technical and operational policies. Such IATA material on altimetry and vertical separation, aeronautical meteorological services and regional planning and implementation have been well received. Further reference material will be produced whenever it can be proved helpful to the industry as a whole.

Aerodrome Requirements

IATA has now submitted to airport authorities and to ICAO consolidated requirements for runways at important aerodromes along the world's air routes. While it is too early to judge the extent to which these requirements will be met in all cases, replies from authorities to date have been mixed. Some have assured IATA that airline requirements will be met, ultimately if not immediately, but in other cases the response has been a blank statement that the airlines are out of luck. These consolidated requirements are often the result of compromise of a wide range of the requirements of individual airlines using a given airport. Thus, it has not always been possible to spell out for the authorities the absolute technical, operational and commercial considerations upon which they are based.

IATA is very conscious of the importance of adequate airports, not only to the efficiency of airline operations, but also to the welfare and economic development of the nations they serve; and it will continue vigorously to promote aerodrome development by every possible means.

All-Weather Landing

The introduction of jet aircraft, which makes maximum operational efficiency more essential than ever, has underlined the importance of all-weather landing. IATA believes that this will be achieved in an evolutionary

manner, partly because all of the necessary technical components of the landing system cannot be brought to the required level of reliability in a short time, and also because certificating authorities and pilots themselves must become gradually accustomed to the idea.

The IATA Flight Technical Sub-Committee, composed largely of airline pilots able to devote time to this work over a continuous period of a few years, has actively been preparing basic operational requirements and is closely following current developments. It works closely with the IATA Radio Systems Group, made up of airline electronic and radio experts, and IATA thus hopes to cover both the operational and the technical aspects of all of the problems concerned.

The immediate objective of this work is to ensure that jets can be made to operate under the same terminal area weather conditions applied to piston-engined aircraft. Once this has been achieved, the objective is to reduce weather minima progressively until all-weather landing can finally be achieved. Small informal working groups are now dealing with a number of specific problems, including the improvement of visual aids to flare and landing in order to meet the requirements of lower minima. In this connection, IATA is maintaining close contact with experimental and research programs in the United Kingdom, the United States, the Netherlands and Australia.

Obstruction Clearances

Of the many evils associated with television, not the least has been construction of tall TV towers and masts which have many locations throughout the world uncomfortably close to the boundaries of aerodromes. These tall skeleton-type structures are the more undesirable because they are extremely difficult to locate from the cockpit of an aircraft even under conditions of good visibility. This was a matter of concern in piston-engined aircraft operation and has become more serious with the introduction of jets.

In a majority of cases, administrations and airport authorities have been legally powerless to prevent this encroachment on the airspace. Existing ICAO regulations are inadequate to meet the performance characteristics of the jet. They are in fact confined to an area within approximately five miles of the aerodrome; and while they recommend that at that distance construction should not project more than 500 feet above the surface, there are no restrictions concerning what may be erected a short distance further away.

IATA has therefore formally proposed to ICAO amendments to these regulations which would raise the status of some recommended prohibition of new construction to that of international standards; provide realistic limitations on the height of new construction around aerodromes; and more than double the distance from the aerodrome within which the amended international standards apply.

Performance Code

IATA continues to take an active part in the work of the ICAO Airworthiness Committee which is now attempting to refine the Provisional Acceptable Means of Compliance (PAMC) on Aeroplane Performance. Few single factors affect the efficiency of aircraft operation more than the performance code to which they must adhere and the ICAO PAMC is considered a big step forward toward the long term goal of a single internationally accepted rule.

FUEL PROBLEMS

Experience has shown that cleanliness is a much more important factor with turbine fuels than was the case with aviation gasoline for piston engines. A special IATA Fuel Study Group, cooperating with fuel suppliers and engine and airframe manufacturers, has reviewed this problem and prepared a reference document on desirable techniques and equipment for the handling of turbine fuels.

PRODUCTION PLANNING AND CONTROL

The jet aircraft is one of the most complex machines designed for transport purposes. This is strikingly apparent in the amount of planning required to keep it serviceable. Airframes and airborne equipment must be removed, overhauled and replaced; spare parts must be provided and materials available in the right place at the right time. All this must be done according to a predetermined plan which avoids imposing violent fluctuations in workload on the facilities and manpower of the maintenance and overhaul organization.

Efficient production planning and control of maintenance and overhaul is therefore the key to economies in one of the few remaining areas of operations where there may still be large potential savings.

Through the IATA Production Planning and Control (PPC) Group airlines have for some time been exchanging information on this subject drawn from their individual experience. Certain broad similarities in approach have emerged from this exchange; and the Group has now been able to start publication of an IATA PPC Handbook on good planning concepts and techniques in this relatively new field. Several chapters have already been produced and more are in preparation.

AIRPORT BUILDINGS AND APRONS

More than 2,000 copies of a second and up-to-date edition of the IATA Airport Buildings and Aprons Reference Document have now been placed in the hands of those responsible for airport development around the world. The document contains technical, facilitation and traffic handling guidance and its effects are beginning to appear in the form of better buildings and facilities for the airlines and their passengers.

VERTICAL SEPARATION

With the growth of air traffic, efficient use of available airspace is of increasing importance to the airlines. A new IATA reference document on Altimetry and the Vertical Separation of Aircraft, has brought together the findings of studies of altimeter accuracy by IATA, ICAO and other agencies, and also presents the consolidated IATA recommendations as to means by which better utilization of airspace can be achieved.

INTERLINE COMMUNICATIONS

A Joint Interline Communications Sub-Committee of IATA and the Air Transport Association of America (ATA) has made gratifying progress in speeding up and improving the exchange of reservations and other messages between the airlines. A broad industry agreement, embracing airlines of both associations, has been reached on a Standard Teletypewriter Message Format and Procedure to permit rapid and ultimately fully automatic transmission of interline reservations messages over the linked teletypewriter systems of North America, Europe and other parts of the world.

Introduction of this format in the near future will eliminate message reprocessing heretofore necessary at transfer points because of the different message formats used in various parts of the world.

The Sub-Committee is also adapting the reservations message text itself for machine handling in the airlines' electronic data processing reservations systems to permit the linkage of these systems and the automatic exchange and processing between airlines of seat availability and other reservations data. Progress to date has been gratifying and the work should be completed in the near future.

Ground Communications

Due to the requirement for point-to-point ground communications which can match the speed of jet aircraft, airlines are making increasing use of individually and jointly operated private telegraph circuits capable of handling messages at speeds much greater than those of normal teletypewriter systems. They have therefore become very important users of leased circuit services and have equally important reasons to secure more favorable tariffs. IATA communications specialists are cooperating with the ITU Consultative Committee for International Telegraphy and Telephony in a study of the tariff structure and conditions of lease of private telegraph and telephone circuits and it is not unrealistic to hope for an ultimate reduction in charges on the airlines.

IATA representatives at the 1959 Administrative Radio Conference of the ITU in Geneva were fully successful in assuring the provision of adequate radio frequencies for aeronautical fixed, mobile and radio navigation services, and particularly for new self-contained airborne systems such as Doppler Radar, Radio Altimeters, etc.

Radio Aids

In the review by ICAO in the past year of existing standards for aids to short distance navigation, IATA took a strong stand in order to meet the requirements of air traffic services and of aircraft operations in the most practicable and evolutionary manner. Although the position was not based on complete unanimity among all members, IATA supported continuance of VOR until 1975, augmented on a building block basis by DME in locations where improved and more flexible fixing coverage is needed. This has now been confirmed by the ICAO Council.

Meteorological Requirements

Development of a clear and concise concept of airline requirements for meteorological services has progressed in the MET Study Group. Its detailed work program includes preparation of a reference document on IATA's view of aeronautical weather services requirements, a continuous review of experience with meteorological services for jet operations, development of policy for the use of radio teletype for automatic reception of weather data in the aircraft; and the meteorological requirements for supersonic operations.

13th IATA Technical Conference

The annual IATA Technical Conference has drawn steadily increasing interest from all sections of the aviation industry. The 13th Conference at Lucerne in May brought together some 500 airline specialists, representatives from governments, other international organizations and technical

experts from manufacturers and fuel suppliers for a full week of very frank open forum discussions on a number of important aspects of jet operations.

Doppler Radar: Discussions of the Doppler Radar System, together with heading reference devices and navigation computers presently known and as likely to be developed, were very productive and of direct value to both airlines and manufacturers. Although there was no attempt to state firm application policies, Conference study clearly indicated that Doppler, even in association with heading reference in-puts now available, will greatly enhance the accuracy of aircraft navigation and provide better track keeping capability and instantaneous ground speed and wind drift indications. It thus offers the possibility of a better use of the airspace through a substantial reduction of present horizontal separation rules between Doppler-equipped aircraft on long distance flights and is very likely to have a favorable effect on fuel reserve requirements.

Flight Instrumentation: Thanks to the presence of a number of research psychologists working in the instrumentation display field, the Conference discussion of flight instrumentation was able to delve beyond the instruments themselves into the pilot's basic requirements for information in the cockpit. It was clearly emphasized that instrumentation and control systems should enable the aircraft to operate to its maximum design limits and, at the same time, to employ efficiently the highest capabilities of its human controller.

The study of guidance for low approach and landing showed singular interest and promise for the future. In order to attain all-weather operations, pilots are paying careful attention to instruments to be used with lowered minima or, eventually, as monitors of the automatic landing. The delicate maneuver of low approach and flare seems likely to require special instrumentation which will provide more precision and which can, by its nature or by its position in the cockpit, be used at the same time that the pilot is watching through the cockpit windscreen for the first sight of the visual aids on the ground. There seem to be two intriguing new ways to achieve this. One is to present a symbolic picture of the horizon, the aircraft, and the runway in the windscreen area in order to coincide in both direction and depth with the runway lights and other actual guides ahead. The other is to display command information outside the central cone of vision, the corner of the eye as it were, by means of a newly developed dynamic technique. This latter radical method appears to provide a precise and compelling command to the pilot whether he is looking at other objects inside the cockpit or whether he is looking out through the windscreen.

The Conference marked a resurgence of interest in dynamic map displays for use in navigation as aids to orientation and tracking, probably due to increased awareness of the flexibility which they offer when used in conjunction with digital computers and other navigation aids.

Cockpit Design and Layout: The Conference was gratified to note that manufacturers are giving concentrated thought to the application of systems engineering methods to cockpit design, not only to correct shortcomings of the past, but also to meet the novel problems expected to arise in the supersonic aircraft.

Air Traffic Control: Exchanges of views on ATC between airlines, administrations and the military clearly indicated that the main causes of most ATC problems are the lack of implementation of regional plans, or variations from them, and the absence of standardization in associated fields. The continuity of ATC systems and of the application of reporting procedures and allocation of cruising levels is too often disrupted by arbitrary national and regional boundaries. It was agreed that ICAO should be requested to encourage adjacent states and groups of states to meet at regular intervals

to provide more complete continuity and standardization and, if possible, reduce the number of boundaries at high altitudes.

In order to eliminate excessively frequent delays in the terminal area, the Conference formulated guidance material for the phases of climb, cruising, descent and holding.

Detailed consideration was given to the joint use of airspace by civil and military aircraft and the Conference adopted recommendations for improving civil/military coordination and for detailed procedures for the reporting and analysis of air-miss incidents.

Another basic cause of ATC difficulties was found to be the shortage of experienced traffic control and communications specialists in many parts of the world. The Conference recommended that training programs should be accelerated and agreed unanimously that all parties concerned should make a maximum effort to improve the salary, status and working conditions of these specialists to attract and keep suitably qualified personnel.

Particular study has been recommended on the application of both primary and secondary radar to ATC, since these will require new procedures and the carriage of special airborne equipment. The study will include comparisons with other developments, both present and future, in the design field.

The Technical Committee will work closely with other interested parties on the development and application of new facilities and equipment, both in the air and on the ground, which are needed to remedy ATC bottlenecks, and which have not yet reached a suitable stage for acceptance.

Flight Planning: A review of flight planning and dispatch procedures was most helpful to many airlines, particularly those starting jet operations. It was clearly indicated that introduction of the jets has changed the duties of dispatchers only in degree, but not in principle.

Training of Flight Crews: The Conference found that the use of flight simulators in training airline crews appeared to be less successful than many airlines had hoped. This was attributed to inadequate cooperation between manufacturers of aircraft and simulators, both on manufacture and afterward to keep pace with modifications. However, airlines felt that with sufficient effort these drawbacks could be overcome and the use of simulators entirely justified. It was held that jet training courses should be carefully planned, that all non-essential information should be eliminated and greater emphasis placed on operational rather than technical aspects. There was some indication that conversion flight training time, now in the neighborhood of 15 to 20 hours per pilot for large jet aircraft, might decrease as airlines perfected their training programs. While some correlation of training time with pilot age was apparent, this factor is less significant than such others as continuity of training and effectiveness of instruction.

Engineering and Maintenance: Specialists in this field conducted an exhaustive review of recent experience with handling of turbine-powered aircraft in the apron and maintenance areas, covering such aspects as maneuvering on the ground, servicing and handling, ground running noise, fumes and blast. One of the concrete results was a recommendation that airlines adopt a standard system to give personnel and aircraft on adjoining stands advance warning of the startup of engines. Further study of guide line marking on apron pavements was also proposed.

A number of areas in which the airlines had had maintenance and engineering difficulties with engines and their frames were brought to the attention of aircraft manufacturers for special development. It was also found that airlines require further study of automatic system check-out requirements for future aircraft. Further study will be undertaken in IATA of the use of flight recorders for such purposes as performance analysis and main-

tenance assistance. In considering certain aspects of spares pooling and exchange agreements, the Conference found a need for greater standardization in the licensing of personnel for modification and overhaul and for certification of components.

Fuels: Fuel now accounts for about 15 per cent of total airline operating and maintenance costs and may, when the jets are fully in service, rise as high as 30 per cent. The Conference therefore paid particular attention to such turbine fuel requirements such as fuel cleanliness, flow rates and pressures during refueling, mixing of fuel, generation of static electricity, and delivery of fuel by weight or heat content instead of by volume.

Agreement was reached on maximum permissible content of dirt and water in fuel as a balance between the highest possible fuel efficiency and the lowest possible fuel price. Manufacturers and fuel suppliers were urged to develop as soon as possible a common approach to standardization of refueling rates and pressure requirements for future aircraft.

The Conference also prepared new guidance material for JP-4 fuel as well as a broader statement embracing both JP-4 and kerosene. The broader statement should help engine manufacturers in laying down design requirements and may in future make it possible for airlines to use special fuel on different routes under particular operating conditions, thereby increasing payload and operating range.

Noise Abatement: Very careful consideration was given to noise abatement techniques on the ground and in the air, in view of their effects on surrounding communities and the limitations which they might place on both the safety and economy of flight. The Conference pointed out that any noise abatement measures which the airlines might adopt would be rendered valueless if the encroachment of residential areas on aerodrome boundaries is allowed to proceed unchecked. It was felt essential that air traffic services at high density airports should cooperate by providing traffic control procedures compatible with noise abatement and by giving pilots of landing aircraft better information on runway conditions. Suggestions that ILS glide slope and other navigational facilities be changed in order to deal with noise in the approach phase were strongly opposed.

Regional Activity

Regional technical activity during the last year has centered around the planning and implementation of air navigation facilities and services essential for the introduction of jets on all world routes. Particular effort has been made to keep continuous and direct contact with government administrations throughout the world.

Jet operations in the *North Atlantic Region* increased rapidly during the Spring and Summer of this year and various measures to handle this traffic with the greatest flexibility of operations and the minimum of ATC restriction were actively discussed with the administrations concerned. Meanwhile, plans originally developed by IATA for the termination of the little used radio telegraphy service and the subsequent redeployment of its frequencies to other communications requirements on this route were approved by the ICAO Council almost without change. IATA has now developed a further plan to provide extended range VHF coverage over a major portion of the North Atlantic with the ultimate object of linking these stations with the projected marine cable connecting the principal North Atlantic oceanic control centers. It is anticipated that when this is achieved, many of the problems stemming from HF/RT techniques in this region will be eliminated. Problems which will require to be resolved include the discrepancies between the noise abatement procedures opposed by the Port of New York

Authority at Idlewild Airport and those recognized by the Federal Aviation Agency and the operational penalties imposed on civil jet operations due to frequent military airspace blockages.

In the *Pacific Region,* IATA has been successful in obtaining additional upper air routes for jet operations in the relatively high density areas between Hong Kong and Tokyo. Particular effort is being made to improve civil and military coordination in order to eliminate undesirable military interceptions of civil aircraft and military restricted areas next to or overlapping civil air routes. On one occasion during the year, civil operations were seriously disrupted by the blocking off of a civil airways for a military exercise.

The rapid increase in the number of jets in use and the need for controlled routes and associated facilities have required intensive activity in the *European Region.* As a result of direct negotiations with practically all Western European countries, several measures have been introduced to facilitate jet operations and IATA requirements have also been taken fully into account in the revision of procedures in certain terminal areas. IATA requirements were satisfactorily met by the ICAO European Rules of the Air and Air Traffic Control Meeting early this year. IATA plans for controlled routes in the upper airspace, determination of cruising levels and vertical separation and the designation of reporting points and procedures have also been adopted. IATA has also participated actively in the meetings of the Committee of European Airspace Coordination (CEAC).

The EURO Control project, establishing a single air traffic control agency for a number of West European countries, is now developing satisfactorily. EURO Control has asked IATA's assistance on a number of matters including the adoption of fundamental principles for civil and military cooperation; and IATA has been asked to participate as well in CEAC studies of the same subject.

Detailed IATA proposals for essential facilities and services in the *African-Indian Ocean Region* were accepted by ICAO this year. If and when implemented, they should ensure efficient air operations in this area.

Rules of the air and ATC matters have had first priority in the *South East Asia and Middle East Region* during the past months. IATA missions in both areas, cooperating with the Bangkok and Cairo offices of ICAO, have succeeded in stimulating the establishment of control areas in some cases and encouraging active planning in others. Meanwhile interim procedures for turbo-jet operations are now in force in a majority of terminal areas. Direct contacts with governments will continue to be made and IATA is actively taking part in informal meetings arranged by ICAO to permit and coordinate implementation of all essential facilities and services.

IATA is participating in ICAO meetings concerned with a detailed air traffic control organization in the *Caribbean Region.* In this area, ICAO is assisting in the establishment of a cooperative Central American Implementation Agency which will provide air traffic services, communications facilities and navigational aids in Costa Rica, Nicaragua, El Salvador, Guatemala and Honduras.

In the *South America/South Atlantic Region,* a smaller IATA mission has visited a number of countries in South America to discuss the problems of introducing the jets with airline representatives and local governments. This mission has laid the foundation for much closer and continuous contact with governments in this area which IATA hopes to consolidate during the coming year.

IATA has cooperated closely with ICAO in investigating the possibilities of joint financing to remedy specific deficiencies in regional plans. It has prepared a list of the deficiencies which require consideration and is now

taking part in a special working group of the ICAO Council which will select specific projects for joint financing.

Because of the increasing importance of regional activity and the need for continuous and direct contact with civil aviation authorities, IATA has now established a second regional technical office at Bangkok to deal with matters in the South East Asia and Pacific regions; and hopes to establish a similar office in South America to cover that continent and the Caribbean. The Montreal headquarters will continue to direct North Atlantic regional activities while the London Liaison Office will cover the European, Mediterranean, African and Middle East regions.

FUTURE OUTLOOK

Supersonic Aircraft: The volume of information and speculation about supersonic flight has grown in the past year from a trickle to a flood which threatens to engulf the airlines and the time has come for IATA to take a long, hard look at what lies ahead. The last Annual Meeting felt that if the airlines' requirements were to have an effect on the ultimate design of a supersonic aircraft they must give thought now to the fundamental problems involved.

The Technical Committee has accordingly created an advisory group to sort out the basic questions which must be asked. Even though many of these cannot be definitely answered at this stage, the Committee hopes to crystallize the airlines' ideas on some of the basic parameters for supersonic operation, such as range, speed and aircraft size, to a degree sufficient to permit rough estimates of their numerical value. Other aspects such as aircraft cooling, noise and air traffic control are being given special consideration.

Working in conjunction with manufacturers, the Advisory Committee is paving the way for the 1961 IATA Technical Conference which will be devoted primarily to an investigation of every possible aspect of the supersonic aircraft.

This work has three aims: to ensure that airlines will have a clear idea of what their needs will be in regard to supersonic aircraft; to ensure that when a supersonic aircraft does arrive, it will be tailored to fit these needs; and to ensure that the potential deficiencies in support equipment, aids and facilities can be pinpointed in order to avoid future bottlenecks.

Cargo Aircraft: The conversion of large numbers of piston-engined aircraft to all cargo operation and the rapid development of turbine-powered cargo carriers has given rise to a need for greater attention to the design features of cargo transports and their support equipment, as well as to associated operating requirements. This subject will be one of the main features of IATA's technical activity in the coming year.

Air Traffic Control: The prospects for improvement in air traffic control services are promising, but no revolutionary advances can be expected. While intensive research and development programs are in progress, the fact that new equipment must be integrated into the existing system on an evolutionary basis eliminates the possibility of any drastic overnight changes. However, it is hoped that this gradual improvement will make possible the progressive elimination of Visual Flight Rules which IATA believes to be essential for efficient air traffic control in the jet age.

A wide range of sophisticated electronic equipment is being developed to overcome delays in high traffic density terminal areas, especially under marginal weather conditions. Some of this is already in operation or under evolution at a few locations. On high density oceanic routes, notably the North Atlantic, the prospects of self-contained navigational systems now being evaluated appear to be most encouraging. Combined with improved

communications techniques now within sight, this may make possible an air traffic control régime which will provide economical utilization of the airspace and the flexibility of operations desirable for jets. The situation could be immediately improved if administrations recognized the improved accuracy of new altimeters which all IATA member airlines are now installing in their jets.

While some progress has been made in improving coordination between military and civil requirements, military exercises, airspace blockages and restricted areas are still responsible for a high proportion of the operational restrictions imposed on civil operations. In addition ATC conflicts continue to occur with uncomfortable frequency. Shortage of trained air traffic control personnel is still a major bottleneck and steps must be taken to attract and keep properly trained personnel as controllers.

All-Weather Operations: In order to reach the goal of all-weather landing, airlines should take part whenever possible in the various trials and evaluations of devices and systems which are now being conducted. It is difficult to measure the total economic benefit which may accrue from all-weather landing, but the frequent heavy losses suffered by the airlines as the result of weather delays and cancellations are well known. Moreover, as air transport captures a larger share of the total transport market, it becomes the more vital to the traveling public and to carriers that the dependability of airline schedules should be maintained.

Planning and Implementation: Only the operators can tell where the shoe really pinches and where serious gaps exist in the worldwide aerial highway system. This area of IATA activity has also continued to expand and IATA must be able and willing at all times to provide manufacturers, regulators and implementation authorities with the fullest information and most helpful guidance possible. In doing so, it will continue to be realistic and to ask only for what is essential for safe and efficient operation of aircraft; and thus to ensure that the efforts of those who provide facilities and services are expended to the best advantage of international civil aviation as a whole.

REPORT OF THE FINANCIAL COMMITTEE TO THE ANNUAL GENERAL MEETING

The report of the Financial Committee of IATA covered a wide range of financial matters, including taxation, accounting and the operations of the IATA Clearing House at London. The report also stated that some larger airlines have decided to self-insure a portion of their fleets, rather than to pay steeply rising premiums for commercial insurance of their big jets.

In a review of the airline insurance position, it was reported that while there is no general support among carriers for a mutual insurance scheme, airlines are concerned by the high premiums being charged for hull insurance of new and larger aircraft and some are taking other steps to counteract this trend.

It was also recommended that the percentage of insurance premiums allowed as brokerage should be re-assessed, because the responsibility and workload of brokers have not increased in the same measure as premiums based on rising aircraft values.

Increased landing fees in many countries and new charges for en route facilities have had a considerable effect on the airlines' operating economy during the past year and carriers were urged to take both collective and individual steps to oppose them.

Acting on behalf of IATA members, the Committee has explored a number of major fields in which electronic data processing can be applied to

airline tasks. It reported that computers are being used for flight planning, maintenance scheduling, tariff construction, personnel records, reservations control and many other tasks.

The IATA Clearing House in London, through which the airlines clear and settle their interline transactions, had a record total two-way turnover of $1,014,000,000 during 1959, the report said. This represented an increase of 23.5 per cent over the 1958 total.

Joint efforts of IATA member airlines in the financial field to cut the costs of their operations have been intensified with the increasing tempo of jet operations. During the past year, the Financial Committee and its sub-committees have examined a large number of urgent and complicated problems relating to nearly every phase of the industry.

IATA Clearinr House

In its thirteenth year of operation, the IATA Clearing House cleared a total two-way turnover of $1,014,000,000—an increase of 23.5 per cent over 1958. At the same time, the 1957 record offset ratio was maintained at the 1958 level of 89 per cent.

Of the 95 Clearing House accounts being handled at December 31, 1959, 69 were IATA members, 22 non-IATA members of Airlines Clearing House Inc., and four were sponsored parties or special accounts.

Interclearances for 1959 between the IATA clearing facility and Airlines Clearing House Inc. in the United States came to $36,203,000, a 15 per cent increase over 1958, while the average offset ratio was held at 96 per cent.

Action by the Bank of England to ease restrictions on the free convertibility of sterling, has made possible the introduction of various additional facilities, as well as simplification of a number of clearance procedures.

The facility of sponsored clearances, whereby non-IATA carriers were for a time permitted to use the Clearing House if sponsored by a member willing to guarantee its clearing obligation, was withdrawn in June, 1959 in accordance with an Executive Committee decision. However, a proposal to permit non-IATA carriers, particularly those which are signatories to the IATA Interline Traffic Agreement, to join the Clearing House is now being studied.

Revenue Accounting

The Clearing House and Revenue Accounting Sub-Committee devoted considerable time to drawing up procedures for the implementation of the use of the basic airline fare, rather than the market worth of the selling fare as basis for interline settlement. It also reviewed a multitude of revenue accounting matters; and, at the request of the Traffic Conferences, is developing a numerical agents' code which should be of considerable benefit to certain branches of the industry.

The Sub-Committee further revised clearance accounting procedures in the light of the freer convertibility of sterling.

Currency

A new Currency Sub-Committee was formed during the past year to deal with the technical aspects of many currency and exchange problems facing the industry, and to be available as an advisory body to the Traffic Conferences.

One subject which the group will scrutinize closely is remittance rates as distinct from selling rates.

STATISTICS

Although IATA has consistently opposed requirements for the collection of origin and destination statistics, an ICAO Panel is actively exploring new proposals and may make concrete recommendations in the next 18 months.

DATA PROCESSING

The Sub-Committee on electronic data processing kept pace with this rapidly growing and developing aspect of the industry. It explored in detail a number of major fields where electronic machinery could be applied to airline data processing aspects of character recognition for automatic preparation of input data, labor distribution, labor reporting, personnel statistics and traffic statistics. It also considered that automatic sensing of source documents (such as flight coupons) for significant instructions could benefit airline data processing functions, and in this connection maintained liaison with the Air Transport Association of America, also keenly interested in developments in this field.

In addition, a continuing study of "housekeeping" items, such as the organization of data processing, scheduling and machine utilization, tape libraries and tape control, etc., was maintained on behalf of the airlines, as well as a constant interchange of information on equipment and techniques.

The Sub-Committee reported that many IATA carriers now utilize electronic data processing equipment, and others are contemplating its purchase. It plans to concentrate at its future meetings on particular subjects of interest within major areas, and to extend airline cooperation and standardization in data processing and related procedures as much as possible.

INSURANCE

An investigation of the possibility of mutual aircraft insurance among the airlines, undertaken in view of prospective increases in hull insurance premiums, was reluctantly shelved by the Insurance Sub-Committee due to the lack of sufficient information from members. It was apparent that insurance rates and experience are still considered by many airlines as confidential and competitive information.

However, several large carriers have elected to undertake some degree of self-insurance as an alternative to obtaining complete coverage in the open market.

In view of the exclusion from standard aviation insurance policies of risks arising from the carriage of radioactive and fissionable material, airlines were warned to check their liability under national legislation and regulations; and take the necessary steps to insure themselves against all types of risk arising from this type of liability.

TAXATION

As in previous years, the Taxation Sub-Committee has been mainly pre-occupied with income taxes. It has concentrated its efforts on persuading authorities that an allocation theory based on system profits is a more equitable approach to income taxation than a levy on gross revenue, rather than actual earnings.

In addition the group examined a multitude of taxations such as levies on trade and capital, turnover, sales and use, insurance, transportation and on free and reduced rate transportation of airline employees.

AIRPORT AND NAVIGATION FACILITIES

During early 1960, a brief was sent to all IATA members outlining the principles to be applied in situations where new airport and air navigation facilities charges, or increases in existing ones, were encountered. Airlines were urged to follow the procedures contained therein, and immediately notify airline head offices and IATA of the new charges so as to afford these the opportunity for concerted action.

Airline operating expenses, particularly those of jet flying, have been considerably affected during the past year by increased landing fees in a number of countries. There have also been new charges for en route facilities, mainly affecting in transit flights.

IATA should continue to press for consultation with governments whenever new or increased charges were introduced and pursue its policy to oppose them. This joint action should be supplemented by individual airline protests through their governments.

REPORT OF THE TRAFFIC CONFERENCES CANNES, OCTOBER 1960

The IATA Traffic Conference held in Cannes, October, 1960, resulted in scheduled airlines agreement on international air fares and rates for most of the world's routes for an unprecedented period of two years. In the past, international fares and rates agreements have been valid for 12 months, but if governments approve, the fares and rates agreed in Cannes are for the most part scheduled to become effective December 1, 1960, or April 1, 1961, until March 31, 1963. Carriers will be able to request specific changes at the end of 12 months if there is a material change in circumstances.

The new fares pattern proposed for government approval includes substantial reductions in lower class fares across the north and central Pacific and between North and South America.

New excursion and family fare discounts, and special low rates for parties traveling together will also be introduced on several routes to promote greater tourist traffic, particularly in the off-season.

On the cargo front, worldwide rates were revalidated at existing levels pending a special IATA Conference, beginning January 23, 1961, which will discuss new approaches to cargo rating in order to encourage greater bulk traffic over the North Atlantic, European and related routes. It is recognized that the airlines need to take bold and imaginative measures to fill the cargo holds of the new jet transports and the growing number of all-cargo aircraft in scheduled service. The industry is on the threshold of a great cargo breakthrough.

The Conferences maintained the established industry policy of basing fares on the jets and permitting a differential in price or conditions of service for propeller aircraft on long hauls. Conditions of service in high and low fare classes remain unchanged, except that North Atlantic Economy class passengers will in future be served hot meals.

Also agreed was an experimental elaboration of industry fares tables by electronic data processing machines, to be done by IATA on behalf of member airlines. Liberalized rules for round trip air-sea journeys were adopted which will make these combined trips more attractive.

A brief area-by-area summary of the Cannes fares and rate follows:

A new economy class service will be offered over the northern and central Pacific at fares 14 per cent below existing tourist fares beginning December 1. Thus the lowest year-round fare between the United States West Coast and Tokyo will drop to $435 on jets and $405 in propeller aircraft. First class fares will go up slightly to $700 one-way on the jets with propeller

aircraft taking either a $50 lower fare differential or offering more liberal seating accommodation at jet prices. Special group rates for parties of 35 or more passengers traveling together will cut northern and central Pacific fares a further 30 per cent. They will be valid between Spetember 1 and February 28 eastbound and November 1 and February 28 westbound. Cargo rates will not change.

Fares within Asia and Australasia were fully agreed with little alteration.

A new fares table for the Western Hemisphere envisages reductions of as much as 35 per cent in the lower class fares for long hauls between North and South America with the New York-Buenos Aires round trip fare being reduced to $599 on jets and $538 on propeller aircraft from $934 and $878 respectively. First class fares would be increased up to 10 per cent.

New family fares, providing a third discount for each additional member of the family group, will be offered between Bermuda and the United States and Canada.

Rates for a wide range of specific commodity shipments between Canada and Europe will be reduced effective January 1. Additionally, new developmental special commodity rates were agreed to encourage volume cargo between North American points and the Caribbean Islands.

Other Western Hemisphere cargo rates will remain largely unchanged.

North Atlantic fares will remain virtually unaltered but carriers on these routes will meet in the Spring to assess results of the new low 17-day excursion fares which went into effect on October 1, and to consider further excursion and group travel schemes.

Fares between the east coast of the United States and the Far East via the North Atlantic will be substantially reduced.

On the mid-Atlantic route, on which economy fares at 16 per cent reductions were introduced this month, there will be minor adjustments, but no significant changes.

Special family fares will be introduced on the South Atlantic routes at a substantial discount off round-trip fares for each additional member of the family group.

Cargo rates over Atlantic routes will hold steady at present levels pending the results of the January meeting.

General fares levels on routes within Europe, Africa and the Middle East, between these areas and between Europe and the Far East and Australasia will remain unchanged after the substantial reductions effected over many of these routes earlier this year. However, the pattern of special creative and inclusive tour fares designed to promote greater off-season tourist traffic will be further expanded and improved. Special holiday fares in Europe which had successful results this spring will be extended to the fall season. Additionally, special fare reductions will be offered for parties traveling to the Middle East, including Israel, Jordan, Lebanon and the United Arab Republic from Europe and the United Kingdom.

There will also be special lower excursion fares from Persian Gulf points to India and Pakistan and from Fiji to India.

Cargo rates in these areas remain unchanged.

III. INTERNATIONAL LABOR ORGANIZATION

AD HOC CIVIL AVIATION MEETING GENEVA, SEPTEMBER 26th-OCTOBER 7th, 1960

The opening plenary sitting of the Ad Hoc Civil Aviation Meeting was held on 26th September, after which the Government, Employers' and Workers' representatives held separate meetings to examine the items on the agenda.

The agenda of the Meeting, which had been drawn up by the Governing Body of the International Labor Office, comprised the following items:

1. Review of conditions of employment in civil aviation.
2. Hours of duty and rest periods of flight personnel.

The following 18 countries which had been invited by the Governing Body were represented at the Meeting: Australia, Belgium, Brazil, Canada, Colombia, Denmark, Norway and Sweden jointly, France, Federal Republic of Germany, India, Italy, Japan, Mexico, Netherlands, Switzerland, United Kingdom, and the United States, as well as observers from non-governmental international organizations.

In implementation of an agreement concluded between the International Civil Aviation Organization and the I.L.O. concerning their collaboration in matters regarding civil aviation, two representatives of ICAO participated actively at all stages of the proceedings of the Meeting.

Twelve plenary sittings were held during the Meeting, during which the following were among the subjects discussed: The technical development of Civil Aviation and its social implications; recruitment and vocational training; safety and crew accommodation on board; holidays with pay for air crew and ground staff stationed abroad; personnel stationed outside the home country; income security of flight personnel after retirement or grounding; interchange of aircraft and personnel; civil liability of flight crews; brief survey of general conditions of employment of ground staff.

Report 1, prepared by the International Labor Office, outlines the subdivisions into which these subjects were divided and ICAO document C-WP/3221 deals with the substance of the conclusions and resolutions of the Meeting.